

## Article

# Cathedral of Sts. Vitus, Wenceslas, and Adalbert—The Melting Pot of Czech Religious, National, and State Identity and Its Legal Status

Ondřej Frinta \*  and Dita Frintová 

Department of Civil Law, Charles University, 116 40 Prague, Czech Republic

\* Correspondence: frinta@prf.cuni.cz

**Abstract:** The article first focuses on the significance of the Cathedral of Sts. Vitus, Wenceslas, and Adalbert to the Czech religious, national, and state identity. The importance of the cathedral is given primarily by its location (Prague Castle), as well as by the thinking of its founder, Charles IV, about the foundations of Czech statehood. On the basis of these findings, the significance and symbolism of the cathedral for the present can be understood. Following this, the legal status of the cathedral, which was the subject of the so-called “cathedral dispute” in its modern history, is examined. The current legal status of the cathedral is the result of an amicable solution to this dispute and the subsequent application of the right of superficies in Czech private law.

**Keywords:** cathedral; St. Vitus; ownership; dispute; settlement; superficies; civil; law



**Citation:** Frinta, Ondřej, and Dita Frintová. 2023. Cathedral of Sts. Vitus, Wenceslas, and Adalbert—The Melting Pot of Czech Religious, National, and State Identity and Its Legal Status. *Laws* 12: 25. <https://doi.org/10.3390/laws12020025>

Academic Editors: Piotr Stec and Luis-Javier Capote-Pérez

Received: 8 February 2023

Revised: 28 February 2023

Accepted: 1 March 2023

Published: 7 March 2023



**Copyright:** © 2023 by the authors. Licensee MDPI, Basel, Switzerland. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution (CC BY) license (<https://creativecommons.org/licenses/by/4.0/>).

## 1. Introduction—Prague and Its Castle

If you look up “*Praha*” (in Czech), “*Prag*” (in German), “*Prague*” (in English), or “*Praga*” (in other languages, such as Russian), the algorithm of any search engine will inevitably first show pictures of the unique skyline of Prague Castle, usually taken from the right bank of the Vltava River and most, but not all, with Charles Bridge in the foreground. This view might be considered as the purest visual essence of the city, its past and present, a display window characterizing the Czech capital as a whole.<sup>1</sup>

The founding of Prague, the future capital, is linked to many national legends, in particular the one about Duchess Libuše<sup>2</sup> (Cosmas of Prague 2009, pp. 48–49): “*One day, [...] the aforesaid Libuše, excited by prophecy, with her husband Přemysl present and other elders of the people standing nearby, foretold thus: “I see a burg, whose fame touches the stars [...]. [...] When you come to that place, you will find a man putting up the doorway of a house in the middle of the forest. From that event—and since even a great lord must duck under a humble threshold—the burg you will build, you will call ‘Prague’ [Praha, from ‘práh’, threshold].”*<sup>3</sup> There is another theory linking the name “*Praha*” to the Czech word for a threshold, but based on a completely different story. In 1784, Prague was hit by a disastrous flood, which caused the weirs on the Vltava River in Prague to burst. The river level, no longer regulated by the weirs, lowered and revealed the pillars of the Roman Judith Bridge, as well as “*thresholds*” in the riverbed created by gravel sediments, convenient for crossing the river. It was these *thresholds* that inspired Václav Fortunát Durych<sup>4</sup> to come up with the theory that the name

<sup>1</sup> That is not to say that this single view gives a full picture of today’s Prague, a highly varied and diverse city in terms of its geography, architecture, and population, covering an area of 496 sq km, with a population of 1,275,406 people.

<sup>2</sup> According to Bohemian legends, Duchess Libuše was the daughter of Duke Krok and the wife of Přemysl the Ploughman, legendary founder of the House of Přemysl.

<sup>3</sup> Cosmas, born c. 1045—died 21 October 1125, was the first known Bohemian chronicler and the author of the *Chronicle of the Czechs, or Bohemians (Chronica Boemorum)*.

<sup>4</sup> Born 28 September 1735—died 31 August 1802, Czech Catholic priest, revivalist, and Slavacist.

“Praha” was derived from the Czech term for *thresholds* in the river, which had ceased to be visible after the construction of weirs on the Vltava.

In ancient times, the territory of Prague was settled by various tribes. There are records of a Celtic settlement (oppidum) on a location called Závist (Hradiště)<sup>5</sup> from around 200 BC. Ptolemy’s map (from the 2nd century AD) shows a Germanic city called *Casurgis* near today’s Prague. During the Migration Period (6th century AD), the Prague basin was settled by the Slavs.

The characteristic skyline of Prague Castle was shaped by two different phenomena. The first, a natural one, was the erosive activity of the Vltava River. The river’s erosive effect gradually shaped the varied relief on its banks across the Prague Plateau. Rome is said to have been founded on seven hills,<sup>6</sup> while Prague was built on a total of nine hills<sup>7</sup>. Prague Castle was constructed on a hill known as *Opyš*.<sup>8</sup>

The second factor that had an impact on what this location looks like today was, of course, the activity of the oldest settlers of the Prague basin who lived there even before the first historically recorded ruler, Duke Bořivoj<sup>9</sup>. The highest point of the originally uninhabited hill called “Žiži”<sup>10</sup> was a place of worship even before Bořivoj’s era. The name of this elevated area, which is usually said to be localised in the area of the third courtyard of today’s Castle (either below the Old Provostry or nearby the Monolith<sup>11</sup>) comes from the Czech word “žár,” which means fire heat. In pre-Christian times, there was a fire site here where pagans made sacrifices to their gods. There was also a stone seat (a simple flat boulder) near the top of Žiži, where each newly elected duke was led to be ceremoniously seated, and his name was announced to the people (Třeštík 2003). When Bořivoj was baptised by Saint Methodius in Great Moravia<sup>12</sup> (unlike the 14 Bohemian dukes who were baptised earlier, in 845, at Louis the German’s court, probably in Regensburg), he did not disregard Žiži as the pagan place of worship in the middle of the Castle. He had the symbolic ditch around the hill filled and built the oldest<sup>13</sup> church in Prague in front of it (around 885), dedicated to the Virgin Mary (Kuchyňová 2010). Paganism was thus replaced by Christianity on the hill, which was the first step in making the Castle a centre of secular and Christian (religious) power.

Bořivoj’s successors from the House of Přemysl continued to consolidate their political (secular) power. This was also reflected in the construction changes made to Prague Castle over time. The original settlement with wooden cabins and a bulwark was further fortified

<sup>5</sup> Place above the confluence of the Vltava River and the original channel of the Berounka River, located in today’s Dolní Břežany, a municipality south of Prague.

<sup>6</sup> Aventine, Capitoline, Caelian, Esquiline, Palatine, Quirinal, and Viminal.

<sup>7</sup> Letná, Vítkov, Opyš, Větrov, Skalka, Emauzy, Vyšehrad, Karlov, and the highest one, Petřín.

<sup>8</sup> The Czech term “*opyš*” is an archaic and rare word of unclear origin, which might have designated a tail. In addition to being the name of the hill upon which Prague Castle was built, the term “*opyš*” means a geomorphological shape in the form of a narrow declining ridge (hence the similarity to a tail). There is, after all, a street which goes from Klárov gently upwards in the direction of the Black Tower of Prague Castle and is still called “*Na Opyši*”. Interestingly, the name “*Opyš*” appears in the historical Bohemian lands only in one other instance—in addition to designating the hill in Prague—as the name of a hill not far from Drozdov near Hořovice (also sometimes referred to as “*Vobyš*”).

<sup>9</sup> Bořivoj I., born c. 852/853 (?)—died 888/890 (?), the first recorded Bohemian ruler of the House of Přemysl and son of legendary Duke Hostivít according to Cosmas (Cosmas of Prague 2009, p. 53): “*Hostivít begat Bořivoj, who was the first duke baptised by the venerable Methodius, bishop in Moravia at the time of emperor Arnulf and of Svatopluk, king of that same Moravia.*”

<sup>10</sup> Cf. Cosmas (Cosmas of Prague 2009, p. 91): “[...] climbing at night to a higher point (called Žiži) in the middle of the burg [...]”

<sup>11</sup> The Mrákotín Monolith, sometimes also referred to as Plečník’s Monolith, is a truncated square pyramid in the Castle’s third courtyard near the Old Provostry. It was revealed in 1928 on the 10th anniversary of the foundation of the Czechoslovak Republic.

<sup>12</sup> Cf. above footnote 9 and also the Christian’s Legend (Kristián and Ludvíkovský 1978): “*On the second day, he instructed the Duke and thirty courtiers who came with him in the basics of religion, and after they performed the customary ceremonious fasting, he revived them with the holy source of baptism.*”

<sup>13</sup> It is also the second oldest church in Bohemia. The oldest one was the Church of St. Clement (Climent) in Levý Hradec, also founded by Duke Bořivoj.

probably already by Bořivoj's son Spithněv I.<sup>14</sup> During the reign of the first Bohemian king, Vratislav II,<sup>15</sup> the wooden fortification was replaced with a stone fortification, including three gates (the Black Tower, White Tower, and Southern Tower). As the monarchs succeeded to the throne one after the other, the Castle gradually grew into the form it has today, witnessing all the historic turns of events.<sup>16</sup>

## 2. Prague Castle and the Cathedral of Sts. Vitus, Wenceslas, and Adalbert

### 2.1. Christianity and Its Manifestations at the Castle before the Foundation of the Cathedral

The consolidation of power by the dukes (and later kings) of the House of Přemysl would have been incomplete and half as efficient had they strived only to secure political, State power. In the era of the growing importance of Christianity in our territory and its close relation to the ruling dynasties (which had the power and the means to promote Christianity in new territories), it was unthinkable that the new seat of the ruling house be built only as a seat of secular power—it was abundantly clear that Christianity and its symbols must be represented, too. The Church of Virgin Mary mentioned above did not survive to modern times. It is usually said to be situated in the middle of the Castle's third courtyard. However, as soon as (approximately) 915 or 920, Vratislav I<sup>17</sup> founded the Romanesque St. George's Basilica. Vratislav I and two other dukes of the House of Přemysl are buried in the basilica, as are the remains of St. Ludmila<sup>18</sup>, Bořivoj's wife. The burial of the remains of (some) Přemyslid dukes, and in particular Ludmila's remains, whose cult grew in significance and became widespread already in the 12th century, strengthened the importance of the Castle as the centre of secular and religious (Christian) power.

St. Wenceslas<sup>19</sup> founded the third Christian building in the Castle complex, namely the St. Vitus Rotunda. Wenceslas ordered the construction of the church after being given a relic of a saint—the shoulder bone of St. Vitus—as a gift from Henry the Fowler, King of East Francia.<sup>20</sup> As a result, the religious importance of the Castle grew significantly—in addition to the Přemyslid dukes and Ludmila (who, however, had not yet been canonised), a holy relic was kept there—and the saint's cult began to spread, with Prague being considered one of its most important centres. After that, the rotunda's religious significance was strengthened even further. After Wenceslas' murder engineered by his brother Boleslav,<sup>21</sup> the latter had Wenceslas' remains transported to the rotunda. This is how the cult of St. Wenceslas was born. In 1039, the holy relics of St. Adalbert were added to the relics of St. Vitus and St. Wenceslas.<sup>22</sup> Břetislav I<sup>23</sup> acquired the relics on his military expedition to

<sup>14</sup> Born 875—died 905/915 (?), Bohemian duke of the House of Přemysl.

<sup>15</sup> Born c. 1033—died 14 January 1092, Bohemian duke and from 1085, the first Bohemian king of the House of Přemysl. His coronation took place on 15 June 1086 at Prague Castle (*Cosmas of Prague 2009*, p. 91): “[...] Archbishop Egilbert of Trier, obeying the emperor's orders, came to the metropolis of Prague on 15 June. Among the holy solemnities of the Mass, he anointed Vratislav, dressed in royal bands, as king and placed a diadem on both his head and that of his wife Swatava, wrapped in a royal robe [...]”

<sup>16</sup> For more details about the significance of the House of Přemysl, see, e.g., (*Třeštík et al. 2009*).

<sup>17</sup> The third Bohemian duke of the House of Přemysl, born 878/888 (?)—died 13 February 921, father of St. Wenceslas.

<sup>18</sup> St. Ludmila, born c. 860—died 15 September 921 in her residence at Tetín at the hands of murderers hired by her daughter-in-law Drahomíra of Stodory (the wife of Ludmila's son, Vratislav). Duke Wenceslas (Ludmila's grandson and Drahomíra's son) had her remains transported from Tetín to the St. George's Basilica in 925.

<sup>19</sup> St. Wenceslas, born c. 907—died 28 September 935 (929 in older sources) at the hands of murderers hired by his brother Boleslav. Bohemian duke, patron saint of the Czech nation, and the symbol of Czech statehood. Under Section 1 of Act No. 245/2000 Sb., regulating public holidays and other holidays, significant days, and rest days, 28 September is a public holiday called Czech Statehood Day.

<sup>20</sup> Born c. 297—died c. 303 as a martyr.

<sup>21</sup> Boleslav the Cruel, born c. 915—died 967/972 (?), the fifth Bohemian duke of the House of Přemysl, son of Vratislav I and Drahomíra of Stodory (*cf.* above), St. Wenceslas' brother.

<sup>22</sup> St. Adalbert, born c. 956—died 23 April 997, the second Archbishop of Prague. He was a member of the House of Slavnik, and escaped the massacre of the Slavnik family at Libice on 28 September 995. He died as a martyr at the hands of pagans.

<sup>23</sup> Břetislav I., born between 1002 and 1005—died 1055, Bohemian duke of the House of Přemysl, who is best known for the kidnapping of his future wife Judith of Schweinfurt from the local monastery.

Gniezno and then stored them in the rotunda. This is how the rotunda became the resting place for the relics of three saints—Vitus, Wenceslas, and Adalbert.

For the sake of completeness, it should be noted that in 973 (during the reign of Boleslav II<sup>24</sup>), the Diocese of Prague was established within the organisation of the Catholic Church. It was subordinated to the Archdiocese of Mainz (by being excluded from the jurisdiction of the Diocese of Regensburg). The rotunda therefore became an episcopal castle, while St. George's Basilica became a monastery church. As a result, the rotunda quickly became the most important church in the Duchy of Bohemia. It soon became unsatisfactory (in terms of size, as well as its representativeness), and so it was demolished shortly before the death of Spitihněv II.<sup>25</sup> However, the grave of St. Wenceslas was piously preserved in its original location. In 1060, the construction of the Basilica of Sts. Vitus, Adalbert, and the Virgin Mary began on the site of the rotunda.<sup>26</sup>

## 2.2. The Cathedral and Its Role

The text above clearly shows that the Castle, with its religious buildings (and rare relics kept in them), played a crucial role already in the 10th and 11th centuries. *"This fortunate unification of the Duchy and the Diocese, the imperium and the sacerdotium, which has lasted—with some interruptions—[...] until our days, [...] is what makes Prague Castle unique."* (Volavka 1948, p. 340).

The king John of Luxembourg played a key role in establishing and funding the construction of the Cathedral at its beginning. On 23 October 1341, he issued a document determining the financial source for the construction of the Cathedral. It was created by the tinthe of urbura from silver mines of Kutná Hora and all the other mines, where the silver was mined or was about to be mined.<sup>27</sup> The beginning of construction of the current gothic Cathedral is connected to the elevation of Prague Diocese to an archdiocese on 30 April 1344, which also meant that it was no longer subordinated to the Archbishop of Regensburg. The first archbishop, Arnošt of Pardubice<sup>28</sup>, was granted the right to coronate Bohemian kings from the Pope (Clement VI) shortly after the establishment of the archdiocese. It was none other than Charles IV,<sup>29</sup> son of John of Luxembourg,<sup>30</sup> who was crowned by Archbishop Arnošt of Pardubice as King of Bohemia on 2 September 1347. In the early 14th century, the situation in the Kingdom of Bohemia was bleak due to the conflicts between the different factions of the nobility and the long-term absence of John of Luxembourg in the kingdom.<sup>31</sup> Charles IV himself described the grim situation in Bohemia after his return (he was born in Prague) in 1333, as well as the sorry state of Prague Castle in his biography (Charles IV 2001): *"We found the kingdom so forsaken that there was not one castle which was free and not mortgaged together with its royal property, so that we did not have anywhere to stay except in houses in the cities just like any other citizen. Even the castle in Prague was desolate, in ruins, and reduced from the times of King Otakar so that it had crumbled almost to the ground. Here we*

<sup>24</sup> Boleslav II, or Boleslav the Pious, born c. 932—died 7 February 999, Bohemian duke of the House of Přemysl.

<sup>25</sup> Spitihněv II, born 1031—died 1061 February 999, Bohemian duke of the House of Přemysl.

<sup>26</sup> For more details about the development of Prague Castle, see, e.g., (Kroupa et al. 2022).

<sup>27</sup> Available online: <https://www.monasterium.net/mom/CZ-APH/AMK/152-VII%7C2/charter> (accessed on 23 August 2022).

<sup>28</sup> Arnošt of Pardubice, born 25 March 1297—died 30 June 1364, the last Bishop of Prague and the first Archbishop of Prague, Bohemian metropolitan.

<sup>29</sup> Charles IV, born as Wenceslas, born 14 May 1316—29 November 1378, 11th King of Bohemia, first Bohemian king to also become the Holy Roman emperor, who ruled in person in all kingdoms of the Holy Roman Empire. He accepted the name Charles at his confirmation while he was raised in France. For more details about the significance of the House of Luxembourg in Czech history, see, e.g., (Royt and Kuthan 2016).

<sup>30</sup> John of Luxembourg, born 10 August 1296—died 26 August 1346, 10th King of Bohemia. He became the King of Bohemia by marrying Elizabeth of Bohemia (born 20 January 1292—died 28 September 1330, the last member of the House of Přemysl on the Bohemian throne), who gave birth—among other children—to their son Wenceslas, later known as Charles IV.

<sup>31</sup> For more details about the significance of the House of Luxembourg in Czech history, see, e.g., (Šmahel and Bobková 2012).

*raised up at great expense the new, and beautiful palace the way it appears to those who look on it today."*

This situation, however, would soon change under Charles' rule (at first only factual, during the reign of his father John). Charles aimed for the universal development of the Bohemian kingdom. The elevation of the Diocese of Prague to an archdiocese was one of the fruits of Charles' efforts to revive the kingdom's former glory.<sup>32</sup> They were also manifested in Charles IV's construction work in the complex of the Castle, where the founding stone of the St. Vitus Cathedral was laid on 21 November 1344 in the presence of John of Luxembourg, his two sons (Charles IV and John Henry), as well as Archbishop Arnošt of Pardubice. *"Charles IV is an incredible reformer in terms of his construction work at the Castle, just like in many other respects. He completed the efforts of his predecessors from the times of the first Slavs until the early Gothic period in the spirit of his own era, and gave them a new meaning. It was Charles IV who created the skyline of today's Hradčany. He turned the external orientation of secular buildings still facing the city into the symbolic orientation of the newly built Cathedral. Its silhouette, whose most prominent features were constructed during the reign of Charles IV, creates the essential chord of the Hradčany panorama. The Cathedral looming over all the other palace buildings suppressed their significance in the Castle's skyline as if to symbolise the rise of religious power. A temple is built for the new archdiocese inspired by impressive French cathedrals, and the royal power, showed off earlier by fortifications and bastions, seems to fade into the background. [...] There is no longer the need to protect his imperial prestige at Prague Castle with fortifications from the city now under his power. The Castle has changed into a monumental seat of State representation, facing foreign noblemen and ambassadors coming to Charles VI's Prague."* (Volavka 1948, p. 342).

The construction of the Cathedral (and other construction works at the Castle) during the era of Charles IV should be discussed in the wider historical context, more specifically the context of Charles' view on the continuity of Czech statehood. St. Wenceslas became the symbol of the organisation of the State already in the 13th century; the seal of the Land Court of Bohemia (*iudicium terre bohemiae*) depicted Duke Wenceslas as the symbol of the State and the band on his right arm featured a Latin phrase summoning the accused (the defendant) to appear in court. Charles IV continued this tradition when he ordered a new magnificent royal crown, which he called the St. Wenceslas Crown, and when he called the Castle the St. Wenceslas Castle. During his coronation as emperor in Rome, he supposedly established a foundation to create an altar dedicated to St. Wenceslas at St. Peter's Basilica, etc. It was not only about the continuity of the St. Wenceslas cult, but also about the acknowledgement of the legacy of the House of Přemysl, which was fully recognised in the Rules of Coronation of Bohemian Kings by Charles IV (and according to which he was then crowned King of Bohemia). It was no coincidence that the ceremony did not start at the Castle, but on the opposite bank of the Vltava River, at Vyšehrad, another important place in Czech history,<sup>33</sup> where the pouch and bast shoes that belonged to the purported (legendary) founder of the House of Přemysl—Přemysl the Ploughman—used to be kept

<sup>32</sup> In addition to this great deed, it is worth mentioning the foundation of Prague's New Town on 8 March 1348, as well as the establishment of Charles University on 7 April 1348 as the oldest university north of Italy and east of Paris, as well as the construction of the Charles Bridge and the foundation of Karlštejn Castle.

<sup>33</sup> Vyšehrad is an ancient fortified settlement, castle, and fortress in Prague built on a rock overhanging the right bank of the Vltava River. Although the fortified settlement was founded only in the 10th century, it is linked to a number of legends from the very beginnings of the Czech history. According to these legends, Vyšehrad was founded by the legendary Duke Krok and it was the seat of the legendary Duchess Libuše, who made many prophecies there, including the one about Prague, and sent a deputation from there to her future husband, Přemysl the Ploughman, legendary founder of the House of Přemysl. Another legend tells the story of Horymír, who fled from Duke Křesomysl by jumping from Vyšehrad into the Vltava River on the back of his horse Šemík. As for Vyšehrad's actual historical significance, it was the seat of the first King of Bohemia Vratislav II for some time (cf. above) due to conflicts with his younger brother Jaromír, Bishop of Prague. In opposition to the religious power at the Castle, Vratislav II ordered the construction of the Church of Sts. Peter and Paul at Vyšehrad, with a chapter of clergymen excluded from the bishop's jurisdiction and subordinated directly to the Pope. The second climax in the recorded history of Vyšehrad came during Charles IV's rule; he demonstrated the continuity of his reign with the Přemyslid tradition by giving a lot of attention to Vyšehrad, including in the form of construction work. However, Vyšehrad never became as important a symbol of Czech statehood or religious power as the Castle with its Cathedral. For more details, see, e.g., (Moucha et al. 2015).

in honour.<sup>34</sup> Only after seeing these relics did the parade set out to “*St. Wenceslas Castle*” for the ceremonious anointment of the new king and his crowning by the Archbishop of Prague. The crown was then placed back on the skull of St. Wenceslas. Moreover, under the threat of an anathema and being declared an enemy of the land, no future king was allowed to keep the crown after sunset (Pludek 1978).<sup>35</sup>

The construction of the Cathedral (and other construction works at the Castle) during the reign of Charles IV should therefore be understood as Charles’ recognition of the historical continuity of the development of political as well as religious power at the time, which came to be symbolised by St. Wenceslas and the tradition of the House of Přemysl as the symbol of Czech statehood.<sup>36</sup> The lead architect of the Cathedral was Matthias of Arras.<sup>37</sup> After his death, the work was taken over by Petr Parlář.<sup>38</sup> In the end, the construction of the Cathedral was completed only in the first half of the 20th century. In 1421, the Cathedral was plundered by the Hussites,<sup>39</sup> and in 1541, it was seriously damaged by fire. It remained unfinished for centuries. It was only in the mid-19th century that the “*Union for the Completion of the St. Vitus Cathedral*” was established with the aim of collecting the financial means necessary—from significant as well as unknown patrons—to finish the construction of the building, which had fallen into disrepair by that time. The construction was supported by the then State institutions (for example, the Assembly of the Kingdom of Bohemia), as well as important personalities (for example, Maria Anna Savoy, Emperor Franz Joseph I, and his wife Elisabeth of Bavaria (Sissi); later contributors include President Masaryk,<sup>40</sup> who supported the construction from his personal funds, etc.) and the general public.<sup>41</sup> The construction was officially completed in 1929. The celebration, attended by President Masaryk and Archbishop František Kordač, was organised on 28 September on the 1000th anniversary of St. Wenceslas’ murder.<sup>42</sup>

On the occasion of the 1000th anniversary of St. Adalbert’s death in 1997, the Cathedral was consecrated to Sts. Vitus, Wenceslas, and Adalbert by decree of Cardinal Miloslav Vlk. This is the origin of its official full name—Cathedral of Sts. Vitus, Wenceslas, and Adalbert.<sup>43</sup>

*“During the reign of Charles IV and the decades that followed, the holy aureole of the St. Vitus Cathedral was strengthened by new graves of saints and patrons of the land—St. Vitus, St. Wenceslas and St. Adalbert [...]. The sacredness of the Prague Cathedral was also enhanced by a number of holy relics that Charles IV acquired for the metropolitan Cathedral. At the same time, the whole building was pervaded by the glorification of the*

<sup>34</sup> Přemysl the Ploughman, legendary Bohemian ruler, husband of the legendary Duchess Libuše, founder of the House of Přemysl. It should be added that legends about a ploughman (peasant) of humble origin as the founder of the ruling dynasty are to be found also in other Slavic cultures, cf. in particular, Piast as the founder of the ruling family of Poland, the Piast Dynasty.

<sup>35</sup> For more details about coronations, see, e.g., (Kyzourová and Vlnas 2016).

<sup>36</sup> “[...] it is a building of dual character from the very beginning. This was Charles IV’s concept: it is a place of god and a symbol of Czech statehood at the same time. The fact that it is not only a cathedral but also the sacro sanctum of statehood is proved by the crown jewels [...]” (Stern 2006).

<sup>37</sup> Matthias of Arras, born c. 1290—died 1352, French architect, constructor, and stonemason.

<sup>38</sup> Petr Parlář, born 1332 or 1333—died 13 June 1399, German-Czech architect, constructor, stonemason, sculptor, and woodcarver.

<sup>39</sup> The Hussite movement was a primarily religiously (but also socially and politically) motivated movement in the late Middle Ages, which followed the ideas of priest and philosopher Jan Hus, born c. 1370—died 6 July 1415 (burnt at the stake in Constance), whose main aim was to carry out a comprehensive reform of the church.

<sup>40</sup> Tomáš Garrigue Masaryk, also known as “President Liberator,” born 7 March 1850—died 14 September 1937, first president of the Czechoslovak Republic, politician, sociologist, teacher, and the main ideologist behind the idea of independent Czechoslovak statehood.

<sup>41</sup> Similar collections were also organised for the construction of the National Theatre, which was opened in 1881 but burned down shortly after during finishing work and reopened in 1883. In this case, the collections financed not only the construction of the original building, but also the repairs of the building destroyed by fire. To a certain extent, these collections may be considered as competition to the collections for the completion of the Cathedral.

<sup>42</sup> The original date of St. Wenceslas’ death was said to be 929, but based on more recent knowledge, the date of his murder is usually considered to be 935.

<sup>43</sup> However, it is also sometimes referred to as the Cathedral of Sts. Vitus, Wenceslas, Adalbert, and the Virgin Mary (with reference to Spithněv’s Basilica, cf. above), for example (Maříková-Kubková et al. 2019).

ruling family, the House of Luxembourg, and the ancient House of Přemysl to which Charles IV belonged on his mother's side. The idea of a State union under the Bohemian crown, conceptualized by Charles IV, is represented in the Cathedral by a heraldic set in the staircase by the south-east corner of the transept. This world was entrusted to the protection of Christ, the Virgin Mary, and the community of Czech patron saints, portrayed in a number of busts at the upper triforium, a place appearing to almost touch heaven. The union between the divine order and the sacralised earthly rule was presented here with extraordinary strength.<sup>44</sup> This is also related to the fact that the Cathedral became the place where the crown jewels are stored. The chamber where they are kept is accessible directly from the St. Wenceslas Chapel. The close connection between the Bohemian royal crown and the patron saint of the land was also emphasised by the fact that it was placed on the head of St. Wenceslas from which it was removed only for coronation. The Bohemian royal crown with a cross with a thorn from Christ's crown was a transpersonal symbol of the Bohemian kingdom and the royal power "by the grace of God". In other words, it was the sacred symbol of the Czech state, which is still true today. The Cathedral as the venue of the coronation and the place where the royal insignia are kept thus became a kind of guardian of the Czech state, the notion of which was sacralised due to all these attributes. [...] Just like in many other European cathedrals, the royal code is clearly visible in St. Vitus Cathedral. The royal aureole of Prague Castle with the Cathedral in its centre did not fade away even in 1918, when the monarchy perished and the Czechoslovak Republic was established. Significantly, just like the rule of the kings used to be legitimised by the coronation ceremony and anointment at the Cathedral in the past, after the establishment of the republic, the assumption of office by newly elected presidents was blessed by the *Te Deum* ceremony in St. Vitus Cathedral." (Kuthan and Royt 2011)

The Cathedral plays this role to this day.<sup>45</sup> The crown jewels are still kept there, as well as the remains of important Czech monarchs,<sup>46</sup> noblemen, and religious officials in the crypt. As for recent notable events which took place in the Cathedral, it is worth mentioning the State funeral of Václav Havel<sup>47</sup> in 2011 or the funeral with State honours<sup>48</sup> of singer Karel Gott<sup>49</sup> in 2019. The Cathedral is understood as one of the symbols of Czech statehood and its continuity.

### 3. Legal Status of the Cathedral

#### 3.1. General Context

After 1989, when the events of 17 November 1989 initiated by Czech students eventually led to the fall of the communist regime in Czechoslovakia,<sup>50</sup> a political system based

<sup>44</sup> Emphasis in bold added by the authors.

<sup>45</sup> For more details about the development of the Cathedral, see, e.g., (Maříková-Kubková et al. 2019), (Kuthan and Royt 2011), or work published both in Czech and English (Bravemanová and Chotěboř 2016).

<sup>46</sup> For the sake of completeness, it should be noted that they include George of Poděbrady (born 23 April 1420–died 22 March 1471), who was excommunicated from the church on 23 December 1466 as a heretic, oathbreaker, blasphemer, and a filthy sheep. Pope Paul II anathemised George and declared a crusade against him.

<sup>47</sup> Václav Havel, born 5 October 1936—died 18 December 2011, Czech playwright, dissident, and critic of the communist regime, first president of the Czechoslovak Socialist Republic after the fall of the communist regime in 1989 and first president of the Czech Republic.

<sup>48</sup> A State funeral should be distinguished from a funeral with State honours. Neither of them is regulated by the law in the Czech Republic and their form stems from historical traditions. A State funeral expresses the highest honour by the State in the case of the death of a prominent personality, typically a high representative of the state, a personality that significantly contributed to the State or the functioning of the whole country, or someone who created extraordinary, impressive work in their lifetime. A funeral with State honours is not bound by ceremonial rules as much as a State funeral, and its form is less restricted in general. The family of the deceased person and the State agree on the specific State honours for the funeral (for example, a minute of silence, honour guard, speeches by high representatives of the state).

<sup>49</sup> Karel Gott, born 14 July 1939—died 1 October 2019, popular Czech singer, who recorded 2500 songs in total and released 293 solo albums (in Czech as well as in other languages) which were immensely successful with large audiences in the Czech Republic and abroad (in particular in Germany).

<sup>50</sup> These events came to be known as the "Velvet Revolution".

on pluralist democracy respecting the principle of the rule of law and fundamental human rights was re-established. Within this political, social, and economic process, it was necessary to deal with acts committed by the totalitarian (communist) regime that became unacceptable from the perspective of the rule of law, pluralist democracy, and respect for fundamental human rights.

Efforts to come to terms with the communist past were also reflected in legislation, namely in Act No. 198/1993 Sb., providing for the illegality of the communist regime and for the opposition to it. Although the Act is of a rather declaratory (proclamatory) nature, it did play its role in the efforts of Czech society to deal with the totalitarian era in Czechoslovakia. The law (in addition to expressing condemnation of the communist regime from 25 February 1948 to 17 November 1989 as criminal, illegitimate, and reprehensible) expressly states that the communist regime (among other acts) systematically and permanently violated human rights and persecuted in an extremely serious manner certain political, social, and *religious* groups of citizens, where the regime used all means of power, in particular (again among acts) arbitrary dispossession of property and violation of ownership rights (Section 1 of the Act).

The Church, as the main ideological enemy of communism (in particular the Catholic Church, but also other Churches and religious societies<sup>51</sup>), was the subject of personal and proprietary persecution to the greatest extent possible, in particular after the communist putsch in February 1948. The Communists gradually gained control over the activities of the clergy, and members of male and female monastic orders and bishops were interned (including the 33rd Archbishop of Prague and future Cardinal Josef Jaroslav Beran<sup>52</sup>). The Church was dispossessed of its property, in particular buildings, forests, and arable land. Under Act No. 218/1949 Sb., providing for the economic security of Churches and religious societies, this property was to be used, through the State budget, to pay for salaries, social security, and pension for the clergymen of certain Churches, as well as the costs of the operation of nationalised property.

It therefore comes as no surprise that settlement between the State and the Churches was discussed intensively after 1989. In 1990, Act No. 298/1990 Sb., regulating certain property relations of monastic orders and congregations and the Archdiocese of Olomouc (referred to as the “Enumerative Act”), was adopted, under which around 200 pieces of real property were returned to the Church, in particular monasteries and monastic houses.

In anticipation of further settlement with Churches and religious societies, Section 29 of Act No. 229/1991 Sb., regulating property relations concerning land and other agricultural property, provided that property originally owned by a Church, religious society, order, or congregation may not be transferred to the ownership of other persons until the adoption of an act regulating such property.

The issue of a final settlement between the State and the Churches was discussed extensively by politicians and various forms that the settlement might take were suggested. Settlement between the State and the Churches was finally provided for under Act No. 428/2012 Sb., regulating property settlement with the Churches and religious societies.<sup>53</sup> Simply put, property worth approximately CZK 75 billion is to be returned to Churches and religious societies, and within 30 years (of the effect of the Act, that is, of 1 January 2013), they should receive approximately CZK 59 billion as compensation for property that may not be returned (or will not be returned for various reasons). None of these acts provided for the Cathedral of Sts. Vitus, Wenceslas, and Adalbert. Moreover, the latter act expressly excluded the Cathedral in Section 18(10).<sup>54</sup>

<sup>51</sup> The term Church is used for Christian religious communities, while a religious society designates communities that do not profess faith in Jesus Christ, *cf.* details in (Tretera 1997).

<sup>52</sup> Beran was interned by the communist State police (StB) at various locations in Czechoslovakia from 1949 to 1963. In 1965, Beran was given permission to travel to Rome for the handover of a cardinal’s hat, but he was not allowed to travel back.

<sup>53</sup> For more details about the act, see, e.g., (Kříž and Valeš 2013).

<sup>54</sup> Section 18(10) of the act provides that: This Act does not apply to the Cathedral of Sts. Vitus, Wenceslas, and Adalbert on plot of land No. 4 covering an area of 5005 sq m and plot of land No. 5 covering an area of 502 sq

The fact that an acceptable settlement with the Churches, which has been a politically sensitive issue for a long time, was not found shortly after the fall of communism, but more than ten years later, created an environment in which the “*dispute over the Cathedral*” (cf. below) was eventually started by the Church (or rather the legal entities representing the Church) (Hrdina 2006, p. 210): “[...] when the Catholic Church in our country reached the conclusion that none of the post-November governments (perhaps with the exception of Tošovský’s caretaker government) was, in fact, willing to pass a restitution law recognising the Churches’ claim and that the declaration of finding a solution to the issue of Church property was no more than a traditional part of the pre-election rhetoric, it decided to claim its property in court. At first, it was mostly successful because the Church was, in fact, dispossessed of the property claimed in violation even of the then applicable (socialist) law in most cases. The decision could not have been different—the judges adjudicated in accordance with the law. In the mid-90s, one of the chambers of the Supreme Court therefore issued a curious legal opinion, referring to the relation between general and special legal regulations, saying that following the adoption of Act No. 298/1990 Sb. (as amended by Act No. 338/1991 Sb.) under which certain real property was returned to monastic societies, Churches may not claim under general legal regulations (that is, in civil actions) other property which they have been deprived of contrary to the law, and that they must wait for the adoption of a special legal regulation (that is, a restitution act);<sup>55</sup> and no such act has been adopted to date.” This doctrine was also later reflected in the decision making of the Constitutional Court, cf., for example, Judgment Case No. II. ÚS 528/02<sup>56</sup>: “In the case, the general courts focused on examining the question of whether the complainant’s ownership right passed to the state. However, they apparently omitted that the passage of Church property is regulated by the peremptory provision in Section 29 of Act [No.] 229/1991 Sb., under which property originally owned by a Church, religious society, religious order, or a congregation may not be transferred to the ownership of other persons until the adoption of an act regulating such property. The act regulating land provides that agricultural property originally owned by legal entities representing the Church would be regulated by a separate act and would be protected until such act is adopted. The regime of restitution acts therefore applies to such property, and it is not possible to file an action to determine ownership due to the absence of an urgent legal interest in the action. It may not be inferred from the fact that the State has not been able to adopt a special restitution act even though Act No. 229/1991 Sb., which came into effect already on 24 June 1991, anticipates the adoption of such act.” In this situation, one might agree with Ignác Antonín Hrdina’s opinion (Hrdina 2006, pp. 210–11): “This puts the Churches in a worse position than during the communist regime when they could, at least theoretically, claim their property in court.” For the sake of completeness, it should be added that in the said judgment, the Constitutional Court also stated, in a more conciliatory manner, the following: “However, the State must honour its commitment to adopt a restitution act concerning Church property, which follows from the said act regulating land, since it must meet the legitimate expectations on the part of legal entities representing the Church, which stems from the legal provision.”<sup>57</sup>

m in Prague, cadastral district Hradčany, including the land. This Act also does not apply to building No. 37 located on plot of land No. 85 covering an area of 776 sq m and building No. 48 on plot of land No. 6 covering an area of 982 sq m in Prague, cadastral district Hradčany, including the land.

<sup>55</sup> Cf., for example, Judgment of the Supreme Court Case No. 3 Cdo 404/96. “The person who is entitled to the property enumerated in the Appendix to Act No. 298/1990 Sb is not authorised to assert the ownership right to property which monastic orders and congregations have been deprived of in the exercise of the State supervision of the property of Churches and religious societies but which is not enumerated in the Appendix to the Act.” Quoted from: ASPI [Legal Information System], Wolters Kluwer ČR, Praha, The Czech Republic, [ASPI ID: JUD9650CZ].

<sup>56</sup> Available online: <http://kraken.slv.cz/II.US528/02> (accessed on 20 August 2022).

<sup>57</sup> And when it still did not happen, the Constitutional Court itself opened the door to justice in the specific case in its Judgment Case No. I. ÚS 663/06: “The Constitutional Court has proven many times in its established case-law that it does not tolerate public bodies, and in particular general courts, employing formalistic procedures using, in essence, sophisticated reasoning for apparent injustice. [...] If restitution is understood as the effort of a democratic State based on the rule of law to remedy certain wrongs committed by a totalitarian regime, then a solution in the form of restitution would be appropriate where the wrong is apparent and ascertained by authorities (cf. also the reasoning of the trial court), as in this case. The formal acts of the State which disposed of the property based on its interests regardless of its actual owner and various inconsistencies on the part of the State may not be interpreted to prejudice the complainant in a State aiming to apply the principles of the rule of law; such procedure would apparently

### 3.2. Dispute over the Cathedral

The whole dispute began on 30 December 1992, when the Church filed an action to determine the right of ownership to the Cathedral of Sts. Vitus, Wenceslas, and Adalbert.<sup>58</sup> The concept of the action to determine ownership (of the Cathedral by the Church) followed from the reasoning above, which was recognised by the court in other cases—the action basically claimed that the Church (or rather, the respective legal entity representing the Church) has never ceased to be the owner of the Cathedral because its “*expropriation*” in 1954 was carried out in a manner that would not result in passing the right of ownership to the state. This opened the question of who actually owned the Cathedral.

Surely, the reader now expects that the arguments of the claimant (the Church) and the defendant (the State) will (at least briefly) be discussed, followed by the court’s decision in the case, or rather the decisions one after the other, because this case, of course, involved more than a single decision by the trial court. This is, indeed, how most disputes over the determination of ownership would be described.

In this case, however, the dispute is not about *any* land on which, for example, a house is built below the castle, but about the land below the Cathedral and the structure located on the land, the Cathedral itself. Emil Svoboda,<sup>59</sup> famous Czech lawyer, legal philosopher, and professor of civil law and the history of legal philosophy at Charles University once wrote (although in connection with family law) (Svoboda 1935): “*Law is not omnipotent. It has its limits that it does not have the means to cross. These limits are created by facts which govern the mentality of human mobs and work like natural forces, unrestrainable by artificial human regulations.*” The authors believe that a little reminder of the limited means available to positive law is a convenient way to begin a description of the “*dispute over the Cathedral*”.

A dispute over ownership—from the perspective of today’s legal order—is a dispute over whether certain facts occurred in the past, which gave rise to a right of ownership to a certain physical object for the benefit of a certain person and whether this state still exists or whether other facts arose later which caused the state to cease to exist. In other words, a dispute over the determination of ownership is, from this perspective, a dispute over the existence or non-existence of legal facts creating or terminating the right of ownership to a certain object—anything else, any other facts, or any other circumstances unrelated to the law do not play a role in such a dispute. However, it is these other circumstances unrelated to the law that have shaped the “*life, meaning and symbolism*” of the Cathedral for centuries, while the question of ownership has been basically completely subsidiary for most of its existence. Current positive law recognises only two options: either someone is an owner or

---

*present the threat of committing a further wrong. [...] Lapse of time plays a key role in this case. The legitimate expectation on the part of the legal entities representing the Church reaches notional “majority” on 24 June 2009, and the legislature, although aware of the duty to meet the legitimate expectation for more than 4 years and notified in a relevant manner of its commitment based on Section 29 of the act regulating land, has failed to act (note: to be more precise, it has failed to act since 1991, which follows from the previous text). [...] The complainant’s action is therefore not precluded in this specific case. However, it would need to be interpreted as an action of its own kind (not unlike a restitution action) aiming to fill the gap created by the long-term failure to act on the part of the legislature in violation of its duty based on Section 29 of the act regulating land, using a procedure corresponding to the purpose of remedying wrongs after 1989, with regard to the relevant specific circumstances of the case.”* The Judgment is available online: <http://nalus.usoud.cz/Search/GetText.aspx?sz=1-663-06> (accessed on 24 August 2022). Although this judgment did not concern the Cathedral of Sts. Vitus, Wenceslas, and Adalbert, it will also be mentioned below in connection with the Cathedral. For more about Section 29 of the act regulating land see, e.g., (Valeš 2012).

<sup>58</sup> Given its scope, the present paper does not aspire to provide the reader with an exhaustive detailed description of the entire dispute. After all, it would not make any sense to describe all the procedural aspects, so the following text is, to a certain extent, a simplification. Firstly, we will not further discuss the issue of the right to sue in relation to the individual legal entities acting on behalf of the Church whose cases were eventually joined. Secondly, we will further discuss only the Cathedral of Sts. Vitus, Wenceslas, and Adalbert (“Cathedral”), although the action concerned, in addition to the Cathedral, the All Saints Church and the “canonical Houses”. Finally, the paper does not cover the other disputes over the furniture and other movables in the Cathedral. We would also like to emphasise that the purpose and aim of the paper is not to evaluate the individual court decisions. There have been many of them, some of them contradictory. The aim is to explain the legal status of the Cathedral and its main aspects in the past and today and the importance of settling the whole dispute amicably. Readers looking for a comprehensive description of the entire dispute might be interested in Pavla Zápotočná’s bachelor’s thesis (Zápotočná 2011).

<sup>59</sup> Born 2 October 1878—died 19 or 20 August 1948.

not, *tertium non datur*. The person who is the owner may freely dispose of the thing, that is, freely dispose of the substance and its proceeds, and exclude any other person from such disposition.<sup>60</sup> All other persons are not the owner although they may mistakenly believe that they are the owner (that is, have possession), or they may, to a limited extent, dispose of the thing while being aware that they are not the owner of said thing (that is, detention, for example, leasing an apartment). Of course, the court must decide the case one way or another; otherwise, it would amount to a denial of justice (*denegatio iustitiae*), which is unacceptable under the rule of law. In light of the above, one should ask: is it *appropriate* to reduce all meanings and symbolism of the Cathedral, all historical events that have shaped its form (tangible, physical, as well as symbolical) to a purely legal question of its ownership? Is it *necessary* to start a dispute over a place that is unique and holy in the broadest sense of the word (discussed above)? There is no other place in all of the Czech Republic which represents the ethos of the whole of Czech history. In the spirit of Svoboda's notion of the limited power of law, will not the outcome of the dispute—regardless of what it is—be detrimental, rather than beneficial? What is the message that this dispute sends to our descendants about the *moral state* of Czech society at the turn of the 20th century?

However, to avoid misunderstanding, one of the cornerstones of the rule of law is that anyone may claim protection of their right before an independent and impartial court if they choose to do so, even in the case of protecting the right of ownership to the Cathedral of Sts. Vitus, Wenceslas, and Adalbert. The right to a judicial remedy may not be denied to anyone; on the contrary, it must be fully respected under the rule of law. The rhetorical questions on the *necessity* of the dispute were meant to question whether it was *inevitable* for the relationship between the State and the Church to reach this point, and they should not be understood as a (moral) condemnation of either of the parties involved.

The authors of this paper believe that the dispute over the Cathedral was unfortunate in that it reflected a conflict of two imperatives, both of them undoubtedly noble in themselves. On the one hand, the *moral imperative* says that if something was taken unlawfully (in this case, the Cathedral by the communist regime), it should be returned (and, importantly, it should not remain in the hands of those who took it, that is, the State). If this is not the case, the wrong has not been remedied, implying that stealing is permitted. On the other hand, the *imperative of the poor Church* says that the Church's primary aim should not be to collect *tangible* wealth, and the Cathedral is priceless *per se*. Even though it is also a burden because the costs of its operation and maintenance are huge, its meaning and symbolism are priceless, not only from the religious perspective, but also from the perspective of national identity and the Czech statehood as such. Is one of these imperatives more important than the other? Are they even comparable? Which of the two principles should be given precedence in the case of the Cathedral?

It is therefore no wonder that the filing of the action and the dispute that followed provoked strong responses, both negative and positive. "The then president Václav Havel noted that in the case of the ownership of St. Vitus Cathedral, it is necessary to distinguish the "physical" owner from the "mental" owner. While it is up to an impartial court to decide who the physical owner is, the mental owner is the Czech nation. Havel said that he respects the decision of the court and that he personally considers the Church to be the natural owner." (Strašíková 2008). When reminiscing about the dispute in 2006, Zdeněk Mahler<sup>61</sup> mentioned the following (Stern 2006): "My premise was that the Church suffered actual property damage, and deserves a remedy. From the very beginning of this affair, I have repeated the same thing: my God, please, withdraw the action before the district court, put an end to the embarrassment, it is as if a local court in Athens were to decide on the owner of the Acropolis. Let the big four meet—the President, Archbishop, Prime Minister, and Speaker of the Parliament—and come to a reasonable compromise

<sup>60</sup> As stipulated in Section 354 of the Austrian General Civil Code of 1811 ("ABGB"), and also in Section 1012 of the current Civil Code (Act No. 89/2012 Sb., the Civil Code, "CC").

<sup>61</sup> Born 7 December 1928—died 17 March 2018, acclaimed Czech teacher, writer, screenwriter, musicologist, and, most importantly, promoter of Czech history. In the end, he sided with the opinion that the Cathedral should not be owned by the Church.

based on co-ownership. [...] At first, the only thing I did was to urgently appeal to the religious prelates, so that they would recognise that this was a big chance. Everybody keeps talking about the tension between the State and the Church, and now we had to the opportunity to find common ground under the Cathedral's roof. [...] If the case is still pending before the court, me and everybody else will fully respect the impartiality of the court. Our only request is that it be a court on a level adequate to the importance of the dispute. It must be considered that the case goes far beyond the restrictions posed by legal provisions. This is clearly a political affair. An affair that cannot be fully resolved by any judicial decision.<sup>62</sup> And this brings us back to the original request: please, in God's name, let us not continue this historic embarrassment."

"This issue is in its way embarrassing,' Zbořil<sup>63</sup> told Deník, saying that the dispute is, in the first place, about symbolism. 'For the Church, it is about remedying a wrong and injustice of the past, for the Castle, it is about the greediness of the Church,' the political scientist commented. He believes that the only option is to reach a reasonable agreement. Zdeněk Zbořil concludes: "To say it outright, the State has the cash, the Church does not. The State should not take care of the Cathedral as if it were like any other church, but rather as the tomb of Bohemian kings, and the Church should make sure that it is not used for hosting parties, but for religious events.'" (Editorial Staff 2007)

Initially, however, the dispute did not appear to be heading for this resolution, meaning an agreement reached by both parties. The action was filed, the proceedings commenced, and by the end of 1994, the District Court for Prague 1, basically agreeing with the claimants' reasoning, decided that the Church was the owner of the Cathedral. "The judgment provoked a strong response from the public. More than a hundred deputies signed a petition demanding the Castle to appeal the decision." (Editorial Staff 2005). However, the judgment was reversed by the appellate court (Municipal Court in Prague) due to procedural errors.

Nevertheless, there was a glimmer of hope for an amicable settlement in the course of the proceedings (Strašíková 2008): "In November 1996, Cardinal Miloslav Vlk<sup>64</sup> announced that the Catholic Church surrenders the St. Vitus Cathedral for the benefit of the Czech nation. However, the gesture did not fall on fertile ground. The Catholic Church thought that the handover of the Cathedral would be entered in the land records book<sup>65</sup> based on a contract of donation. 'The other party did not want a contract, they wanted a law. But that is not what I wanted,' Vlk admits now." "The cardinal's statement was all over the media. In the end, the result was that the then President Havel gladly took initiative, dealing with the matter out-of-court in the form of an act. I can show you the draft act that he sent to me. And Archbishop Vlk even commented on the draft and agreed to it. President Havel ordered Prime Minister Klaus to set up a legal commission that would draft the law within 3 months and propose it to Parliament. It was evident that the proposed act would be smoothly passed across the political spectrum. But then, suddenly, the voice of the Church said: 'We do not want an act, a contract will be enough'. But this is a completely different concept: you can withdraw from a contract unilaterally at any time . . ." (Stern 2006)

The dispute continued. In October 2005, the District Court for Prague 1 decided again that the Cathedral belongs to the Church, and the Municipal Court as the appellate court affirmed the decision. In September 2006, the Cathedral was handed over by the Prague Castle Administration to the Church. With its judgement of 31 January 2007 Case No. 28 Cdo 3318/2006<sup>66</sup>, the Supreme Court eventually (as the court examining the appeal review<sup>67</sup>) reversed the judgment of the Municipal Court, deciding that the Cathedral

<sup>62</sup> Emphasis in bold added by the authors; regardless of Mahler's personal opinion on the dispute, the authors consider this statement absolutely fitting.

<sup>63</sup> Zdeněk Zbořil, born 22 October 1938, Czech historian, political scientist, university professor.

<sup>64</sup> Miloslav Vlk, born 17 May 1932–died 18 March 2017, Czech Catholic cleric and theologian, 35th Archbishop of Prague and Primate of Bohemia, vigorously advocated, among other causes, for the return to the Church of property confiscated by the State during the totalitarian era.

<sup>65</sup> Authors note: "land records book" is mentioned; however, in 1996, it is the Real Estate Cadastre.

<sup>66</sup> Available online: <http://kraken.slv.cz/28Cdo3318/2006> (accessed on 23 August 2022).

<sup>67</sup> In Czech civil procedure, an application for an appeal review on points of law is an extraordinary remedial measure, which may be used to challenge (in prescribed cases) final decisions of an appellate court. Cf. Section 236 et seq. of Act No. 99/1963 Sb., the Code of Civil Procedure.

belongs to the State. In 2007, the State took over the Cathedral from the Church. In September 2007, the District Court for Prague 1, and then also the Municipal Court—bound by the legal opinion of the Supreme Court—decided that the State owns the Cathedral.

Following the above-mentioned Judgment of the Supreme Court Case No. 28 Cdo 3318/2006, the Church (specifically the respective legal entity—the Metropolitan Chapter of St. Vitus) and the State (specifically its structural unit—contributory organisation Prague Castle Administration) reached an agreement on the administration of the Cathedral after the entry of the said judgment. The agreement used to be available directly on the website of the Archdiocese of Prague, but today the text is accessible online only as Appendix 2 to Pavla Zápotočná's bachelor's thesis (Zápotočná 2011), quoted above. This latter text was used as the source when describing the main points of the agreement below.

The agreement starts with a preamble, which provides the following: *“The Agreement on the Use of St. Vitus Cathedral (5 October 1957) and the Record of Handover and Takeover of Historical Objects Stored in the Metropolitan Cathedral of St. Vitus in Prague for Use by the Czechoslovak State—Office of the President of the Republic (2 August 1958) are no longer valid. [...] The purpose hereof is to regulate the mutual rights and obligations of the parties involved and to determine the conditions governing the joint operation of the Cathedral while providing visitor services, enabling the use of the Cathedral for liturgical purposes, as well as purposes related to the representation of the State, providing maintenance for movables placed in parts of the Cathedral accessible to visitors, and to determine other related conditions and rules of its use.”* Article I of the Agreement expressly states that the Prague Castle Administration manages the following real property in the cadastral district Hradčany, city of Prague, *“owned by the Czech Republic,”* namely:

- “(a) building without a building number or a registration number, services to the public (St. Vitus Cathedral) on plot of land No. 4;*
- (b) building without a building number or a registration number, services to the public (tower of the St. Vitus Cathedral) on plot of land No. 5;*
- (c) plot of land No. 4 covering the area of 5005 sq m, built-up area and courtyard;*
- (d) plot of land No. 5 covering the area of 502 sq m, built-up area and courtyard [...].”*

As for the other provisions of this Agreement worth noting, the Church agreed to not carry out any activities for value or business activities in the Cathedral, not even through third parties (without prejudice to the Church's right to organise special- and general-purpose church collections), and to pay the proportionate part for the consumption of utilities and the operating costs of its activities when using the Cathedral for liturgical purposes for a flat price of CZK 500 per month. The Prague Castle Administration agreed to provide, in particular and at its own expense, the performance of its employees and contractual partners to ensure the smooth operation of the Cathedral and to carry out maintenance and repairs. The remaining parts deal with technical and organisational issues related to the operation of the Cathedral (security, energy supply, visitor services, administration of the building, cleaning services, etc., provided by the Prague Castle Administration). It is important to note that this Agreement covers operational issues following Judgment of the Supreme Court of the CR Case No. 28 Cdo 3318/2006, and it should not be confused with the declaration made later by the Archbishop of Prague and the President of the Republic on 24 May 2010 (*cf.* below).

### 3.3. Core of the Dispute

The focal point in the decision making of the courts regarding the ownership of the Cathedral was the manner in which the communist State seized the Cathedral. In January 1954, Act No. 2/1954 Sb., providing for the State plan of the development of the national economy of the Czechoslovak Republic for 1954, was adopted. This act, however, does not mention the nationalisation of the Cathedral. In fact, there is no provision in this act that

would be related to religious issues or Church property in any way.<sup>68</sup> Nevertheless, it was in reference to this act that Government Decree No. 55/1954 Sb., regulating the Protected Area of Prague Castle, was issued. It provided the following: Prague Castle, seat of the President of the Czechoslovak Republic and a significant historical monument, belongs to the people of Czechoslovakia. The Protected Area of Prague Castle is established to ensure its due administration and protection (Section 1). The buildings in the Protected Area are administered by the Office of the President of the Republic, which also carries out all administrative activities in relation to the State preservation of monuments in the territory of the Protected Area (Section 2). The Protected Area is delimited by the Council of the Central National Committee of the Capital City of Prague in agreement with the Office of the President of the Republic (Section 3). The compensation for the buildings in the Protected Area is determined by the Council of the Central National Committee of the Capital City of Prague; it may also decide that no such compensation is to be provided (Section 4). It is also worth noting that the Government Decree mentions the seat of the President of the Republic, but not the Cathedral, and it does not employ standard diction of dispossession (references to nationalisation or expropriation), as was the case in other acts passed at that time.

The delimitation under Section 3 was not carried out by the Council of the Central National Committee of the Capital City of Prague, but by the Department for Internal Affairs of the Council of the Central National Committee of the Capital City of Prague, lower in the hierarchy than the Council itself. *“The Department for Internal Affairs did not bother to enumerate the plots of land and buildings that are part of the Protected Area of Prague Castle in its regulation. It simply “staked out” the territory from one corner to the other, in several instances right in the middle of the plots of land. Again, the regulation does not mention the expropriation of the Cathedral at all. On 17 February 1956, the Department for Construction of the National Committee of the Capital City of Prague issued a decision with a curious title: Decision on the Compensation for Real Property in the Protected Area of Prague Castle. It states that “after the delimitation of the Protected Area, the ownership of the following plots of land and buildings is passed onto the Czechoslovak State with effect as of 16 December 1954 under Section 1 of the Government Decree” and a list of the plots of land and buildings concerned follows, including the Cathedral. The change in ownership was then entered in the land records books. [...] The state’s ownership title is not recorded as Government Decree No. 55/54 Sb., but [...] as the Decision of the Department for Construction of the National Committee of the Capital City of Prague of 17 February 1956 [...]” (Zápotočná 2011).* It is only the latter decision that no longer refers to “all Czechoslovak people”, but to the “property of the Czechoslovak state”.

Based on the above, the trial court could easily reach the conclusion that Government Decree No. 55/1954 Sb., regulating the Protected Area of Prague Castle, may have, in fact, created the basis for passing the right of ownership to the State, for these reasons in particular: the wording is different from other regulations regarding nationalisation,<sup>69</sup> and the decree regulates *Prague Castle*, the seat of the President of the Republic. Prague Castle and the Cathedral are identifiable in the land records books as two clearly separate (not interchangeable) structures. If the expropriation was to be based not on the government

<sup>68</sup> The act refers to, for example, substantial improvement in the standard of living of workers based on a further increase in production, growth in work productivity and cost effectiveness, as well as to securing the development of fuel and energy sources, an increase in the production and productivity of agriculture, or to a decrease in the prices of consumer goods. For the sake of completeness, Section 6(11) of this act stipulates: *“Furthermore, cultural care will be increased. The artistic level of theaters and concerts will increase and the number of their visitors will increase significantly. The construction of 19 cinemas will begin. In film production, the majority of color films will be produced. Television broadcasting and its programs will be expanded and improved.”* It is questionable if a kind of relationship to the Cathedral can be determined from this provision, namely from the first sentence. Seeing the provision in a complex, the purpose of it is different (to increase cultural care) than to nationalise the Cathedral.

<sup>69</sup> For example, Section 6(1) of Act No. 71/1959 Sb., providing for measures regarding certain private real property expressly states that, under certain circumstances, the executive body of the District National Committee may decide that a rental house together with the building plot on which it is built and the garden bordering the plot, if owned by the owner of the rental house, *“passes to the State socialist ownership.”*

decree, but only on the decision of the Department for Construction of the National Committee of the Capital City of Prague (which is stated in the land records book as the title), then it would be against the law even under the then legal order. Section 9(2) of Constitutional Act No. 150/1948 Sb., the Constitution of the Czechoslovak Republic, stipulated: “Expropriation must have a statutory basis and must be compensated, unless an act provides that compensation is not to be provided.”

The Supreme Court, as the court examining the appeal review, had a different opinion, however. In its Judgment Case No. 28 Cdo 3318/2006, already mentioned above, the court first invoked the then applicable doctrine of the impossibility to request individual pieces of property outside the scope of the legal regulations governing restitution and the requirement to wait for the adoption of an act regulating the settlement of property with Churches, which was also reflected in the decision making of the Constitutional Court (cf. above Judgment Case No. II. ÚS 528/02) and also the Opinion of the Constitutional Court sitting as full court, Case No Pl. ÚS-st. 22/05: “The Constitutional Court believes that it is the discretion of the legislature to regulate the respective relations with the adoption of another act. Resolving the issue by deciding the specific cases in the form of individual judicial decisions would constitute a proactive approach to the issue to such a degree that it would eventually mean that the judiciary would take over activities that belong exclusively to the legislative branch within the separation of powers.”<sup>70</sup> The Supreme Court also stated: “A declaratory action as a preventive procedural legal institution is, due to its traditional purpose, a too fragile means to protect a right of ownership which the original owners were deprived of—in fact, or possibly also in law—decades ago by the State, the defendant in this case. A State aspiring to be governed by the rule of law must remedy its unconstitutional and unlawful acts committed by the State power in its infamous past through the legislative remedy of restitution. If, in addition to this requirement, the principle of legal continuity applies [...], it is not possible to claim in its courts an individual reversal of facts through a means which is traditionally of only a declaratory, not constitutive nature, meaning that it would establish new legal relationships. [...] Although in light of the above, the issue of the factual justification of the action in terms of whether the legal predecessors of the claimants were (actually) deprived of their right of ownership to the real property in question by Government Decree No. 55/1954 Sb. seems secondary, the Supreme Court is entitled to express its opinion within the proceedings that it considers the legal opinion upon which the decision of the appellate court was based to be erroneous. [...] The opinion of the appellate court stating that Section 1 of the decree is a mere political, ideological, and also vague proclamation without any legal content is untenable given the actual effect of the government decree. After comparing regulations providing for the nationalisation of property applicable at the time and emphasising the conceptual differences, even the appellate court had to come to the conclusion that the government’s objective was to transfer to the State certain—that is, the contested—property, and also to deprive certain legal entities representing the Church, specifically the legal predecessors of the claimants, of the right of ownership to the property. Also, it was not possible to disregard the meaning of Section 4 of the decree, which anticipates the possibility of compensation, which itself confirms the objective of the regulation in relation to buildings which undoubtedly belong (Section 1) to the people, where the phrase (belong to the people) can only be interpreted from today’s democratic perspective, as well as the perspective back then, as State ownership; any other interpretation of the subject of (popular, social, etc.) the right of ownership was not seriously supported even by the socialist jurisprudence. In the context of the decree, the appellate court failed to notice that the regulation defines the term Prague Castle as a significant historical monument and a protected area (see the title of the regulation and Section 3 thereof). The conclusion reached by the appellate court, stating that the government decree did not concern the right of ownership to the real property at all, and that it did not modify the right of ownership of the legal predecessors in any way, is untenable with regard to the court’s own factual findings regarding the delimitation of the Protected Area of Prague Castle by Regulation No. 57/1955 Sb. or Decision of the Department for Construction of the Central National Committee

<sup>70</sup> Available online: [http://nalus.usoud.cz/Search/GetText.aspx?sz=st-22-05\\_1](http://nalus.usoud.cz/Search/GetText.aspx?sz=st-22-05_1) (accessed on 23 August 2022).

*of the Capital City of Prague of 17 February 1956, on the Compensation for Real Property in the Protected Area of Prague Castle.*"<sup>71</sup>

Again, the Church lodged an application for an appeal review on points of law against the judgment of the Municipal Court in Prague with the Supreme Court, which refused the application as inadmissible in Case No. 28 Cdo 4969/2008. Nevertheless, the court stated once again that: *"It follows from the decision of the court examining the appeal review<sup>72</sup> that, given the time that has elapsed since the date the State took over the contested real property on the basis of Section 1 of Government Decree 55/1954 Sb., the claimants do not have an urgent legal interest in the determination of ownership sought by them. Also, the cited decision of the Supreme Court states that the real property in question was undoubtedly transferred by the legal regulation to the State, and the courts may not therefore deny the factual or legal effect of such legal regulation. [...] Without a statutory authorisation regarding restitution, the courts may not proactively restore a right that the appellants were deprived of by the State through its measure—according to the appellants arbitrarily, in secret, and using the ideological hallucinogen of popular ownership. If the appellate court reflected the conclusions clearly following from Opinion of the Constitutional Court sitting as full court Case No. Pl. ÚS—st. 22/05 in its decision challenged by the application for an appeal review on points of law, as has the Supreme Court done, it could not have decided on the admissibility of the case, respecting the prohibition of judicial arbitrariness."*<sup>73</sup>

The reasoning behind the steps consequently taken by the Church was explained by its attorney Petr Zderčík (Němcová 2006): *"We decided to go through the appeal review proceedings simply to meet the requirement for filing a constitutional complaint. We have exhausted all available legal remedies. The constitutional complaint is based on a violation of the right to a fair trial. [...] We consider the dispute so important and significant with respect to the Church and the position of the Archbishop of Prague that we will exhaust all remedies available to restore the historical rights of the metropolitan chapter. In case the Constitutional Court does not agree with our complaint, we have six months to apply to the human rights court in Strasbourg."* In the end, the Church did file a constitutional complaint (technically speaking, there were two constitutional complaints). However, they were later withdrawn by the Church after it entered into an agreement with the State on 24 May 2010 (cf. below).

A brief summary of the difference of opinion between the District Court for Prague 1 (as the trial court) and the Supreme Court (as the court examining the appeal review) could lead to the conclusion that, legally speaking, there were only two alternative solutions available: either the Church, or rather the specific legal entity under canon law, is still the owner because the Cathedral has not been nationalised (and in that case, from a procedural perspective, this fact should be confirmed by a declaratory judgment), or the State is the owner because the Cathedral has been nationalised (and in that case, the question of whether the Cathedral should be returned to the Church is to be resolved—but this would be a decision of the legislature, not the judiciary). It was the latter opinion that prevailed in the judgment of the Supreme Court.

It should be noted that it is easy to look into legal regulations from the quite recent past because their period context is general knowledge, but it is much more complicated to look further into the past, where there is no such knowledge, and also to understand the law as applicable then in the context of the historical period. The following part therefore explores the relevant historical context.

### 3.4. Historical Context: Divided Ownership and the Building of a Church as a Legal Entity

Medieval society was based on different principles of the organisation of power, religion, and society than today. When the Diocese of Prague was elevated to an archdiocese and the founding stone of the Cathedral was laid, the population of the historical Bohemian lands was a nation of one religion (Catholic). It comes as no surprise that once the dispute

<sup>71</sup> Decision of the Supreme Court Case No. 28 Cdo 3318/2006.

<sup>72</sup> That is, from the previous Decision of the Supreme Court Case No. 28 Cdo 3318/2006.

<sup>73</sup> The decision is available online: <https://www.zakonyprolidi.cz/judikat/nscr/28-cdo-4969-2008> (accessed on 24 August 2022).

over the Cathedral started, many people referred to the past and tried to argue according to the original intent of its founder.

Dušan Třeštík<sup>74</sup> relates (Kubeczka 2007): “When Charles IV built the Cathedral, he donated it to the archdiocese, which basically amounted to a loan for consumption under medieval law. The monarch retained his ownership, but the donee also had ownership rights. And this has not changed since. The ownership of the Cathedral is stuck in this medieval state, and it is not a matter to be resolved by any regular current civil court.”

*“The institution of ‘divided ownership’ played a crucial role in the Middle Ages. Simply put, the superior owner held the right of disposition, while the utility owner only had a (restricted) utility right. This means that it was the traditional relationship based on the principle of a fief between the lord and his subject. The same relationship also applies to the Cathedral, which was constructed on the same basis during the era of medieval feudalism: the superior owner—duke, king, emperor—gave the Cathedral to the Church for use.” (Zeman 2011)*

*“It all started with a theory that quickly became widespread: ‘The cardinal does not have the keys to his Cathedral’. [...] This was, of course, nonsense that only the naive could believe. The cardinal has always had the keys to the Cathedral. When this statement was proved to be untrue, also by an official letter written by the head of the Office of the President Medek,<sup>75</sup> another theory appeared, namely that Charles IV ‘donated the Cathedral to the chapter in 1344 in a golden bull’. First of all: Charles IV was a prince, not a king, in 1344, so he could not have issued a bull. Second of all: there was no Cathedral at that time, its founding stone was laid only in November that year. And thirdly: no such bull of donation exists, let alone a golden one! [...] Charles IV., who initiated the construction, ordered together with his father John of Luxembourg that one tenth of the yield of the royal silver mines be used for this work. He then basically charged the chapter<sup>76</sup> with supervising the construction. This meant that the Church was the administrator, user, and operator, but never the direct owner. However, a third theory soon emerged. According to this one, Charles IV entered in the Tables of the Land that the Cathedral is owned by the chapter. [...] there was no such record and it could have never existed. [...] this is an utterly absurd formulation for the Gothic period. Back then, no one established the ownership of universities or cathedrals. Everything was, of course, in the king’s power and in his ownership. Even though some volumes of the Tables of the Land were destroyed by fire, so they cannot prove or disprove the statement, there is still no way that there was ever such an entry in them, and any historian would confirm that. If the king is the owner of the building and finances the construction, then he, of course, holds the right of patronage, which is inherited by his successor. Emperor Joseph II [...] transferred the rights of patronage to all cathedrals in the monarchy to the State. This means that in a traditional Catholic country, such as Austria, the coronation St. Stephen’s Cathedral is, of course, in the State’s ownership.<sup>77</sup> [...] The land records books supposedly contain an entry from 1873, saying that the Church owns the Cathedral. I*

<sup>74</sup> Dušan Třeštík, born 1 August 1933–died 23 August 2007, historian of the Academy of Sciences of the CR and journalist.

<sup>75</sup> Ivan Medek, born 13 July 1925–died 6 January 2010, journalist and musicologist, head of the Office of the President of the Republic Václav Havel.

<sup>76</sup> That is, a body of clergy headed by a dean or provost.

<sup>77</sup> It should be noted that the building of St. Stephen’s Cathedral does have legal personality (it is a legal entity) under canon law, which is called “*Römisch-katholische Metropolitan- und Pfarrkirche zu St. Stefan in Wien*”, and as such it is entered in the Real Estate Cadastre (*Grundbuch*) as the owner of the plots of land on which it is built, namely plots of land No. 817 (5670 sq m) and No. 818 (70 sq m). Cf.: [https://austria-forum.org/af/AustriaWiki/Stephansdom\\_%28Wien%29#cite\\_note-97](https://austria-forum.org/af/AustriaWiki/Stephansdom_%28Wien%29#cite_note-97) and <https://kataster.bev.gv.at/#/center/16.37316,48.20846/zoom/18.3> (both links accessed on 23 August 2022). By contrast, the Paris cathedral, *Notre-Dame de Paris*, is owned by the State in accordance with the Act of 9 December 1905, regarding the separation of the Churches and the State (*la loi du 9 décembre 1905 de séparation des Églises et de l’État*), similar to most religious buildings in France. Cf.: <https://www.vie-publique.fr/fiches/271400-la-loi-du-9-decembre-1905-de-separation-des-eglises-et-de-letat> (accessed on 23 August 2022). Finally, the Collegiate Church of St. Peter at Westminster is a “*Royal Peculiar*,” that is, it is excluded from the jurisdiction of the diocese in which it is located,

*can tell you exactly what this entry says and how it came to be: that year, the Institute of the Blind in Hradčany asked Emperor Franz Joseph to give them another piece of land, so that they could build a new building. It was therefore discovered that part of that land was owned by the archdiocese. So the archdiocese requested that all of their property in Hradčany be entered in the land records books that were being compiled then. The list was four pages long. When everything was added and recorded, it was found out that the entry did not mention the Cathedral. The secretary at the cadastral office was ordered to add the Cathedral. He did so, but being an honest bureaucrat, he noted ‘sine presentato’ above the entry, meaning without written evidence. The entry itself, written in Gothic script in German, says that plot of land No. 4 on which the east horseshoe of the chapels is built, and plot of land No. 5 on which the tower is built are owned by the ‘Metropolitan Church of St. Vitus’. So the land is owned by the church, not the archdiocese! This makes sense, the land, of course, belonged to the king, who provided it for the construction, meaning the church. And since a church is not a legal entity,<sup>78</sup> a person who will take care of it is appointed, that is, its administrator. That is the chapter in this case. So let me emphasise this again: the land records books do not refer to the ownership of the Cathedral, but the plots of land. And these are not owned by the Church or the chapter, but the Cathedral itself!” (Stern 2006)*

Although the opinions quoted above differ in details, they both make one point abundantly clear: if the dispute before the courts was limited to the paradigm that either the Church or the State is the owner, then from the historical perspective, such a paradigm seems incomplete. There is another option, divided ownership, meaning that the church itself had legal personality and the plot of land was owned by the church itself, not the Church or the State. After all, this is the case of St. Stephen’s Cathedral in Vienna, geographically and historically close to the Cathedral (*cf.* above).

Multiple legal relations to a single thing were typical for medieval property relations, so the institution of divided ownership was very practical at that time. *“‘Superior’ ownership, as the name itself suggests, was originally understood as decisive. It was even considered to be part of rulers’ privileges and was closely intertwined with public authority—the superior ownership was referred to as the dominion eminens. However, the meaning gradually shifted to the ‘utility’ ownership, which resulted in the German jurisprudence at the turn of the 18th and 19th centuries in the understanding of the rights of the feudal lord and land nobility rather as a burden restricting the property of the vassal or subject. In the 19th century, in the Czech lands, peasant’s and vassal’s utility ownership became the exclusive ownership according to the Roman-law model.”* (Petr et al. 2018).

Divided ownership in the context of the Cathedral may explain its legal regime at the time of its foundation and the following period; the king, who is, of course, the owner of the land, provides it for the construction of the Cathedral, which is built using his financial means. If the king is the owner of the land, then he is, in the spirit of the Roman right of superficies (*superficies solo cedit*, *cf.* above), the owner of everything attached to the land, that is, also the structure being constructed. However, he does not administer and manage the religious building, but entrusts its administration to the Church, or rather its organisational part, that is, the chapter as a body of clergy. Such a person has certain rights, perhaps comparable to the rights held by a utility owner, but it is limited by the monarch as the superior owner.

In addition, Section 357 et seq. of the ABGB should be mentioned, as it still regulated this institution: If the right to the substance of a thing is united in one and the same person with the right to the produce, the right of property is complete and undivided. However, if one person has only a right to the substance, the other, on the contrary, in addition to a right to the substance the exclusive right to the produce of it, the right of property is

---

and it is subordinated directly to the monarch. *Cf.* <https://www.bbc.co.uk/news/uk-11795159> (accessed on 23 August 2022).

<sup>78</sup> It should be noted that a church is, in fact, a legal entity under canon law. However, that does not change Mahler’s conclusion that the plots of land on which the Cathedral is built are in the ownership of the Cathedral.

then divided and incomplete for both parties. The former is called lord paramount, the latter usufructuary proprietor (*dominus utilis*) (Section 357 of the ABGB). In this case, there was again a distinction between the superior owner and the utility owner; the former was the owner of the substance (lord paramount), who was—as the owner—protected by a possessory action against any person who would interfere in his right of ownership, meaning even against the utility owner (usufructuary proprietor). The utility owner is also the owner, so he is also protected by a possessory action, which means even against the superior owner.

The General Civil Code (ABGB) regulated the institution of divided ownership, still linked to feudal relationships. The 1950 Civil Code<sup>79</sup> no longer provided for this institution, and it has not been regulated in Czech private law since.<sup>80</sup> It is evident that civil courts examining a dispute over a cathedral at the turn of the 20th century could not invoke divided ownership, even though the Cathedral was built at a time when the institution was widespread. Moreover, neither party ever claimed that the Cathedral should be regarded as being under the regime of divided ownership (for example, as a result of an exceptional, unique, and historically rooted residue surviving until the present<sup>81</sup>).<sup>82</sup>

Furthermore, it seems that considerations based on divided ownership (although typical for the social and economic relations in the era of the foundation of the Cathedral) could be justified in the period during which the construction of the Cathedral began but are not relevant at all to its further existence. It is therefore necessary to take a look back into the history of the ownership of churches.

Firstly, “*proprietary churches*” should be considered. In the 6th and 7th centuries, if a lord built a church on his land, the building—again, in the spirit of the right of superficies—was his, so he earned income from the payments and fees for church services paid by the believers. It was up to the owner to decide how to spend the earnings (for example, they decided how much they used to further develop the church, to pay the clergy in the church, that is, the person they had chosen themselves, etc.). The bishop, as the head of the diocese, had no power over what happened in such a church. As the Church consolidated its power and its importance grew, the pressure to liberate the Church from secular power intensified.

*“[T]he Church pressured secular lords to surrender their right of ownership to the churches (and the related arbitrary appointment of clerics to the church administration), and to settle for the “right of patronage”, which included (and still includes) the right of presentation (that is, the right to bindingly propose the appointment of a cleric at the specific church to the bishop of the diocese). Property rights in the case of churches where the secular lords surrendered their ownership rights in this manner were settled elegantly: in most cases, the right of ownership did not pass to the Church, or a legal entity representing the Church (after all, this act could be considered a forced donation). The building of the church (fabrica ecclesiae) became legally independent, in today’s legal terminology: it acquired legal personality [...]. The Church authorities (preserving the rights of patronage of the secular authorities) only administered the property of these legal entities.” (Hrdina 2006, pp. 204–5)<sup>83</sup>*

Legal entities whose substance is based on property, not an actual person, were known already in late Roman law, the period of Christian Roman emperors (Heyrovský 1910): “It was only in the era of Christian emperors that it was possible to establish foundations for charitable purposes in the form of independent institutes (*pia corpora*), serving directly and independently

<sup>79</sup> Act No. 141/1950 Sb., the Civil Code.

<sup>80</sup> Act No. 40/1964 Sb., the Civil Code and Act No. 89/2012 Sb., the Civil Code.

<sup>81</sup> Similar to, for example, the institution of “floor co-ownership”, which has survived until today in exceptional cases. Cf., for example (Svoboda 1909).

<sup>82</sup> Under Section 120(2) of Act No. 99/1963 Sb., the Code of Civil Procedure, in contentious proceedings, the court is not bound only by the evidence proposed by the parties, but it may also present other evidence in addition to the evidence proposed by the parties where it is necessary to ascertain the facts of the case and where it follows from the case file, but this was not considered by the courts deciding the case.

<sup>83</sup> For more details about founders and patronage rights, see, e.g., (Hledíková et al. 2005).

*a specific purpose, such as hospitals (nosoconia), orphanages (orphanotrophia), [...] etc. The assets and liabilities of the foundation are not owned by the state, the municipality, or any other corporation or, in particular, a specific natural person for whose benefit the foundation should serve (destinataries), [...] but constitute special assets and liabilities which are owned independently and serve exclusively for a specific higher purpose. Such independent foundations, called 'piae causae', are legal entities in themselves, separate legal persons with rights and duties, foundations with a specific purpose. Such persons with their own assets and liabilities also include Christian churches (ecclesiae), monasteries, (monasteria) and other places of worship. [...] Since, in addition to churches and similar institutes for Christian services, most charitable foundations are also considered as religious institutes in late Roman law, their establishment requires a permission from the Church. A foundation established based on this permission becomes a legal entity without any further acts. It is not necessary to be granted special legal personality by the state. As for the capacity to have rights and make actions, foundations are comparable to corporations [...]. They may engage in legal transactions through their representatives. Foundations are usually represented and their assets and liabilities are administered by special administrators supervised by the bishop (administratores, curatores), who are appointed in advance based on the founder's provisions."*

Although the legal construct of a church (the structure) as a legal entity, that is, a separate legal person, may seem rather unusual from today's perspective, the above shows that such a construct did not deviate from the traditional concept of legal entities in accordance with the gradual development of corporations on the one hand and foundations on the other.<sup>84</sup> By its nature, it is a foundation<sup>85</sup>, that is, a legal entity whose substance is certain property—in this case, the building of a church—nothing more, nothing less.

A church as a legal entity (or as an independent person with respect to property, that is, a person having the capability to acquire and own assets and liabilities) is, after all, to be found in more recent legal regulations. For example, the Ordinance of the Bohemian Court Chancellery of 29 January 1783 provides that (Bušek et al. 1931): "[...] where parish or already existing churches have their own assets and liabilities, a part thereof is to be used for building and establishing new churches [...]." Section 38 of Act No 50/1874 ř. z., regulating the external relations of the Catholic Church, provides that: "The State administration of religious affairs has, in particular, the right to ensure that the registered assets and liabilities of churches and Church institutions are preserved [...]." Section 39 of the Act provides that: "The assets and liabilities of each church and Church institution are to be separate from the prebendary's assets and liabilities, and administered and accounted for separately." It clearly follows that a church was independent in terms of property, a legal entity recognised by the State power.<sup>86</sup>

On 25 June 1871, Act No. 95/1871 ř. z., providing for the general act regulating land records books, was adopted. This Act was amended for the Bohemian lands by Act No. 92/1874 z. z. č., providing for the establishment of new land records books for the Kingdom of Bohemia and their organisation. In insert No. 2 of the land records book for the cadastral district Hradčany (referred to in German as "Gradschin" at the time), there is an entry regarding the ownership right to plot of land No. 4 (located below the Cathedral, item No. 1 on page A) and plot of land No. 5 (below the southern tower of the Cathedral, item No. 2 on page A). According to the entry on page B, the right of ownership to the plots of land No. 4 and No. 5 (that is, items Nos. 1 and 2) are recorded for the benefit of the "Catholic Metropolitan Church of St. Vitus", that is, for the benefit of the Cathedral.<sup>87</sup> The entry on page B is, in fact, introduced by the phrase "Sine praesentato," meaning without a document presented. The entry in the land records book thus does not refer to the ownership of

<sup>84</sup> Cf. also (Frinta 2008).

<sup>85</sup> The current Civil Code uses the term 'endowment institution,' which includes foundations and endowment funds (cf. Section 303 et seq.).

<sup>86</sup> It is not the aim of this paper to describe in detail the legal entities representing the Church and their development. The authors believe that basic information about this institution suffices for the purposes of the present study. For more detailed information on this complicated topic, cf. in particular (Czernin 1997), also (Pšenička 2002) and (Beran 2004).

<sup>87</sup> Literally: "[...] wird das Eigentumsrecht für Katholische Metropolitankirche zum heiligen Veit, einverleibt."

the Cathedral (the structure), but to the ownership of the plot of land. Furthermore, it is evident that the entry does not deviate in any way from the concept of a church as a legal entity having the capacity to acquire and own property, including the land on which it is built (below the structure), which was already mentioned above. This is the same legal construct as in the case of St. Stephen's Cathedral in Vienna (*cf. above*).

### 3.5. Amicable Settlement

Archbishop Miloslav Vlk (*cf. above*) was succeeded by Dominik Duka,<sup>88</sup> who was appointed the Archbishop of Prague in 2010. Duka was a member of a working group for negotiations between the Czech State and the Vatican and for the preparation of an international agreement regarding the legal status of the Catholic Church (which was, however, rejected by the Chamber of Deputies of the Parliament of the Czech Republic). Duka was aware that disputes over property damage the image of the Church, which, in his opinion, should not, for example, argue over the St. Vitus Cathedral in court ([Zvolánek et al. 2010](#)).

Shortly after Duka assumed the office of the Archbishop of Prague, an agreement was reached with the then President Václav Klaus<sup>89</sup> to terminate the litigation over the Cathedral. Their consensus was formally expressed in an official declaration on 24 May 2010, which is annexed to this study as Appendix A. In accordance with the declaration (*cf. Article 4 of the declaration*), the Church received the building of the Old Provostry (in the third courtyard near the Cathedral) and “Mladot's House” (on Vikářská Street behind the Cathedral) from the State for free use (that is, not the ownership thereof). In addition, the Council of the Cathedral was established (*cf. Article 3 of the declaration*), composed of the holders of the keys to the crown chamber.<sup>90</sup> The purpose of the Council is to contribute to comprehensive and due care of the Cathedral and its operation in the interest of believers and the general public. The close cooperation between the two on the maintenance of the Cathedral is formally highlighted by the composition of the Council, which includes representatives of both the State and the Church.

*“It was only thanks to the current archbishop Duka,<sup>91</sup> who tries to find common ground with politicians, that the dispute was settled, even at the cost of the Church basically waiving its claim to the Cathedral. In May 2010, only three months after Vlk left the office of archbishop, Duka and Klaus entered into an agreement under which the State and the Church settled and share the administration of the Cathedral “fifty-fifty”. [...] The dispute over the Cathedral may serve as an example of the different approach taken by the two cardinals. ‘Each of them dealt with the issue in a different way—Cardinal Vlk and the chapter emphasised the legal and economic aspects of the affair, while Dominik Duka decided to end the dispute with an agreement on the shared, amicable administration of the Cathedral,’ said Milan Badal, External Relations Director at the Archdiocese of Prague and Duka’s close friend, for Aktuálně.cz. However, their diverging opinions supposedly had no effect on their relationship.”. ([Pregler 2017](#))*

<sup>88</sup> Dominik Václav Duka, born 26 April 1943, 36th Archbishop of Prague and 24th Primate of Bohemia from 2010 to 2022, appointed Cardinal in 2012 by Pope Benedict XVI.

<sup>89</sup> Václav Klaus, born 19 June 1941, Czech economist and politician, President of the Czech Republic from 2003 to 2013.

<sup>90</sup> The crown jewels are stored (in a strongbox) in the crown chamber. The door to the crown chamber from the St. Vitus Chapel has seven locks (hence the seven keys), leading up a stairway above the southern entrance to the Cathedral (Golden Gate). The crown chamber itself is located above the Golden Gate, behind the mosaic of the Last Judgment (two windows in the mosaic lead directly to the crown chamber). The location of the crown chamber (and the crown jewels kept there) is not random; in the past, people entered the (unfinished) Cathedral through the Golden Gate, so everyone had to (symbolically) pass below the crown jewels—the most important symbols of State power. The symbolism of combining religious and State power is therefore extremely strong.

<sup>91</sup> For the sake of completeness, the authors add the current Archbishop of Prague, Jan Graubner, born 29 August 1948, assumed office on 2 July 2022.

Based on the declaration (agreement) of top representatives of the Church and the State, the constitutional complaints (*cf.* above) were, in fact, withdrawn, and the proceedings before the Constitutional Court were discontinued. First, the dispute was terminated in relation to the Metropolitan Chapter of St. Vitus,<sup>92</sup> and only later—after some complications<sup>93</sup>—in relation to the Collegiate Chapter of All Saints at Prague Castle.<sup>94</sup>

The dispute over the Cathedral was settled for good on the political level by top representatives of the Church and the State, in the way that had been mentioned earlier by certain prominent personalities or historians as the only feasible option.

After the discontinuance of the proceedings before the Constitutional Court based on the agreement of 24 May 2010, speculations of the potential outcome of the case, if it had continued, started to appear. Later, in Judgment IV. ÚS 822/11-2 of 22 April 2013, the Constitutional Court came to the following conclusion regarding other buildings (and other complainants, in this case natural persons) in the Prague Castle complex: “[I]n relation to the respective real property, Government Decree No. 55/1954 Sb. may not be considered as a valid title for passing ownership to the State due to its vagueness. The state’s act of taking over the ownership of the real property was therefore a wholly arbitrary interference infringing on universally recognised human rights and freedoms. The general courts, which reached the opposite conclusion in their decision-making (the trial and the appellate court only due to being bound by the cassation judgment of the Supreme Court), adopted a formalistic approach, and failed to perform their duty to interpret communist legal regulations in accordance with the basic principles of democratic rule of law and their duty to interpret the Out-of-Court Rehabilitations Act in conformity with the constitution.”<sup>95</sup>

Indeed, the doctrine which makes it impossible for the Churches to claim their property using other instruments than the legal regulations governing restitution (*cf.* above) with the requirement to wait for the final settlement between the State and the Church in the form of statute must still be considered. However, the Judgment of the Constitutional Court of 24 June 2009 I. ÚS 663/06, mentioned above, should be recalled at this point, since the Constitutional Court clearly diverged from the doctrine, criticising the State that the anticipated act regulating the settlement between the State and the Churches had not been adopted for a very long time, and the State failed to fulfil the legitimate expectations of the Churches (*cf.* above). Moreover, this decision did not involve natural persons, but a legal entity representing a Church—the Royal Canonry of Premonstratensians at Strahov.

*“The verdict, anticipated by Vlk with hope, was about to be delivered. ‘It was shortly before the decision was made,’ confirmed former constitutional justice Ivana Janů, one of the three judges sitting on the panel that decided the case, for Aktuálně.cz. She did not want to speculate on what the final decision would have been. It is hard to say what would have happened had the Constitutional Court awarded the Cathedral to the Church. Would such a step have provoked resistance to Church restitutions in general, which were still being prepared at the time, and finally approved after several*

<sup>92</sup> *Cf.* Resolution of the Constitutional Court Case No. I. ÚS 1240/09-1 available online: <https://www.zakonyprolidi.cz/judikat/uscr/i-us-1240-09-1> (accessed on 24 August 2022).

<sup>93</sup> The problem was that, in addition to the Cathedral, the dispute concerned the Collegiate Chapter of All Saints at Prague Castle, led by another legal entity representing the Church, different from the Metropolitan Chapter of St. Vitus. The dean of this chapter, Václav Wolf, opposed Archbishop Duka, and refused to withdraw the constitutional complaint. Archbishop Duka resolved the delicate situation by electing a new dean as the head of the chapter: German Albert-Peter Rethmann, who withdrew the complaint. However, Václav Wolf informed the Constitutional Court that he still considered himself to be the rightful dean, since Rethmann’s election had been invalid. The Constitutional Court expressed its opinion on the matter in Resolution Case No. I. ÚS 1240/09-2, stating that *“The interpretation of the individual provisions of the Code in borderline or contentious situations [ . . . ], however, does not fall within the competence of the either the bodies of the Czech Republic, general courts or the Constitutional Court. The above follows from the principle of the secular State and the autonomy of Churches and religious societies enshrined in the constitution [in particular, Article (2)(1) and Article 16(2) of the Charter of Fundamental Rights and Freedoms]. Where doubts arise concerning the canon validity or permissibility of a certain act, possibly relevant to Czech law, the bodies of the Church (ecclesiastical courts, congregations, etc.) have exclusive competence to decide the case, and the State body (recording body, courts, etc.) does not review the autonomous opinion of the Church in any way, and accepts it as is.”* *Cf.* also (Pregler 2017).

<sup>94</sup> *Cf.* Resolution of the Constitutional Court Case No. I. ÚS 1240/09-2 available online: <https://www.zakonyprolidi.cz/judikat/uscr/i-us-1240-09-2> (accessed on 24 August 2022).

<sup>95</sup> Available online: <https://www.zakonyprolidi.cz/judikat/uscr/iv-us-822-11-2> (accessed on 24 August 2022).

unsuccessful attempts? How would it complicate the relationship between Duka and the president? Would the current archbishop be able to agree with Miloš Zeman<sup>96</sup> on a settlement regarding other religious buildings, as was the case in 2015?” (Pregler 2017). The settlement in 2015 refers to the handover of the building of the New Provostry (“Mocker’s Houses”) and St. George’s Convent in the Castle complex to the Church. The Church agreed to repair the buildings within five years and, more importantly, to waive any other claims to real property in the Castle complex (Editorial Staff 2015).

If one were to answer the rhetorical questions in the previous paragraph, at least one thing would be certain: the decision of the Constitutional Court (whatever it would have been) would, undoubtedly, have created more tension in society at the time, as the whole dispute (and the role of the Church in it) was considered a very sensitive issue (which is, after all, evident from some of the quotations used throughout this study). Looking back, it was probably for the best that an agreement concerning the Cathedral was reached before the Constitutional Court issued its decision in the case.

#### 4. Epilogue: Cathedral and the Current Civil Code

After years of preparation, the current Civil Code (Act No. 89/2012 Sb., the “CC”) was adopted in 2012, replacing the old Civil Code from 1964. The 1950 Civil Code (Act No. 141/1950 Sb., the Civil Code) and the 1964 Civil Code (Act No. 40/1964 Sb., the Civil Code) were not based on the right of superficies, that is, in the legal sense, they permitted the existence of a plot of land and a structure on it as two independent things (which therefore might have different owners).<sup>97</sup> This changed with the effect of the current Civil Code (that is, 1 January 2014), which meant a return to the original regulation from the 1811 General Civil Code (ABGB), and the principle of *superficies solo cedit* (“surface yields to the ground, cf. above) was revived for the relationship between the land and the structure.<sup>98</sup> The transitional provisions stipulate that a structure which is not a component part of a plot of land on which it is built under the existing legal regulations, ceases to be a separate thing on the date of effect of this Act, and becomes a component part of the plot of land if, on the date of effect hereof, the right of ownership to the structure and the plot of land was held by the same person (Section 3054 of the CC).<sup>99</sup> Since the owners of the structure (the Cathedral) and also the plot of land on which it is built were identical on 1 January 2014 (that is, the Czech Republic), the procedure under Section 3054 of the CC was applicable, and the Cathedral became a component part of the plot of land.

Today, the Cathedral is entered in the Real Estate Cadastre in the cadastral district Hradčany, city of Prague, plots of land Nos. 4 and 5. The type of land is recorded as a built-up area and courtyard. A component part of the plot of land is a structure, namely a building without a building number or a registration number having the purpose of providing services to the public (meaning the Cathedral), where the owner of these plots of land (whose component part is the structure—the Cathedral) is the Czech Republic, and it is the Prague Castle Administration that is competent to manage the property of the State.<sup>100</sup> To avoid any doubt: from the perspective of private law today, or rather from the perspective of the legal regulation of the relationship between the land and a structure built

<sup>96</sup> Miloš Zeman, born 28 September 1944, Czech politician, economist, and the President of the Czech Republic since 2013.

<sup>97</sup> Cf. Section 155 et seq. of the 1950 Civil Code and Section 119 of the 1964 Civil Code.

<sup>98</sup> Under Section 506(1), component parts of a plot of land include the space above and below the land, structures built on the land, and other facilities, except for temporary structures, including anything embedded in the plot of land or attached to the walls.

<sup>99</sup> The situation where a plot of land and a structure built on it are owned by different persons is regulated by Section 3056 of the CC by the establishment of a statutory right of pre-emption, where the owner of the land on which a structure is built, which is not a component part of the plot of land under the existing legal regulations and did not become a component part of the plot of land on the date of effect of this Act (meaning, in particular, due to being owned by a different person), has a right of pre-emption to the structure, and the owner of the structure has a right of pre-emption to the plot of land.

<sup>100</sup> Available online: <https://ikatastr.cz/#kde=50.09018,14.39985,19&info=50.09093,14.40027> (accessed on 23 August 2022).

on it, only plots of land below the Cathedral are a separate thing, while the Cathedral itself is a component part of the land.<sup>101</sup> This means that the Cathedral (that is, the building, the structure itself) is not, legally speaking, a separate thing. From the perspective of the Civil Code, it—literally—does not exist as a separate thing (sic.).

Paradoxically, from the perspective of private law today, the initial paradigm of the significance and symbolism of the Cathedral is, in fact, reversed completely (of course, it is happening unintentionally, not deliberately): the historically most important part—the building of the Cathedral—is not important from the perspective of private law at all; legally speaking, it does not even exist, as it is a mere *component part* of another thing, namely the *Earth's surface, a plot of land*. Moreover, vice versa, only the *plot of land, the Earth's surface*, which alone undoubtedly does not even come near the importance of the Cathedral itself, is significant from the perspective of current private law—it is that *plot of land* that is, legally speaking, *a separate thing*, which may be disposed of, regardless of whether there are a couple of trees growing on it, a garage, a family house, or . . . a cathedral!

Let us go back to Emil Svoboda's quote about the limits of positive law and the impossibility to cross them (Svoboda 1935). The limit in this case is the evident impossibility from the perspective of positive law—and all the more so in its current form—to reflect the uniqueness, significance, and symbolism of the Cathedral. This only confirms Mahler's fitting comment (cf. above) that "*the case goes far beyond the restrictions posed by legal provisions.*"

Where a *dispute* between two parties needs to be settled, a neutral third party may be called to make the decision. However, there are other ways to resolve a dispute as well: by the parties themselves, provided that they are capable of breaking free from the past and looking to the future. Although such a negotiation might be complicated, its outcome, *a consensus* based on mutual agreement, may be more valuable than a judicial decision imposed by the State power. Looking back at the dispute over the Cathedral, the *agreement* between the State and the Church—in the given situation—might be considered as the best resolution because only an *amicable* settlement (where, *stricto sensu*, there are no winners or losers) could contribute significantly to easing the tension between the State and the Church.

**Author Contributions:** Conceptualization, O.F. and D.F.; methodology, O.F.; writing—original draft preparation, O.F.; writing—review and editing, D.F. All authors have read and agreed to the published version of the manuscript.

**Funding:** This research was funded by Charles University grant Cooperatio—LAWS.

**Conflicts of Interest:** The authors declare no conflict of interest.

## Appendix A

### Official Declaration of the President of the Republic and the Archbishop of Prague and Primate of Bohemia Regulating the Mutual Relationship with respect to the Maintenance of the Cathedral of Sts. Vitus, Wenceslas, and Adalbert<sup>102</sup>

Proceeding from the Preamble to the Constitution of the Czech Republic, remaining faithful to all the valued traditions of the ancient statehood of the Lands of the Bohemian Crown and Czechoslovak statehood, as well as the century-long tradition of common history of the Czech State and the Roman Catholic Church, and expressing their mutual will to ensure reliable and harmonic cooperation between the State and the Roman Catholic Church on the administration of the Cathedral of Sts. Vitus, Wenceslas, and Adalbert, the President of the Republic and the Archbishop of Prague and Primate of Bohemia declare the following:

<sup>101</sup> A component part of a thing is defined in Section 505 of the CC as anything that belongs to a thing by its nature and cannot be separated from a thing without devaluing the thing.

<sup>102</sup> The text is available online: <https://www.cirkev.cz/archiv/100524-slavnostni-prohlaseni-o-spolecne-peci-o-katedralu> (accessed on 24 August 2022).

### Article 1

Proceeding from the common belief that the Cathedral of Sts. Vitus, Wenceslas, and Adalbert (“Cathedral”) is a national religious, cultural, and State symbol, and with the objective to create a permanent foundation for the development of good relationships between the State and the Church at Prague Castle, the President of the Republic and the Archbishop of Prague and Primate of Bohemia unanimously state that the purpose hereof is to regulate the mutual rights and obligations of the parties involved and to determine the conditions governing the joint operation of the Cathedral while enabling the use of the Cathedral for liturgical purposes of the Roman Catholic Rite, providing visitor services, as well as purposes related to the representation of the state, providing maintenance for movables placed in parts of the Cathedral accessible to visitors, and to determine other related conditions and rules of its use.

### Article 2

The President of the Republic and the Archbishop of Prague and Primate of Bohemia have agreed on the need to regulate the relationships between the State and the Church at Prague Castle based on cooperation, also with regard to the fact that, as to the date of execution hereof, a binding property settlement between the State and the Catholic Church for the period from 25 February 1948 to 17 November 1989 had not been reached, it is appropriate and fair to resolve the dispute by mutual agreement and to not continue the dispute over the Cathedral and other real property in the Prague Castle complex in court.

### Article 3

For the purpose of ensuring the maintenance of the Cathedral, the President of the Republic and the Archbishop of Prague and Primate of Bohemia have agreed on the establishment of its Council, which should contribute to the comprehensive and due care of the Cathedral and its operation in the interest of believers and the general public.

Membership in the Council is an honorary position. Members of the Council are the holders of the seven keys (President of the Republic, Prime Minister of the Czech Republic, Archbishop of Prague and Primate of Bohemia, President of the Senate of the Parliament of the Czech Republic, Speaker of the Chamber of Deputies of the Parliament of the Czech Republic, auxiliary bishop, provost of the Metropolitan Chapter of St. Vitus, and the mayor of the capital city of Prague) necessary for accessing the crown jewels in the crown chamber of the Cathedral, as the top representatives of the State, the Church, and the municipality.

### Article 4

The President of the Republic and the Archbishop of Prague and Primate of Bohemia have agreed that the Office of the President of the Republic, or the Prague Castle Administration, will provide for use the real property at Prague Castle necessary for the Roman Catholic Church, namely the Metropolitan Chapter of St. Vitus, to ensure the maintenance of the Cathedral. The Office of the President of the Republic, or the Prague Castle Administration, will continue to ensure any and all maintenance of said real property.

Executed in Prague on 24 May 2010.

## References

- Beran, Karel. 2004. *Církevní právnické osoby* [Legal Entities Representing the Church]. *Právní rozhledy* 6: 199.
- Bravemanová, Milena, and Petr Chotěboř. 2016. *Koruna království. Katedrála sv. Víta a Karel IV.* [The Crown of the Kingdom: Charles IV and the Cathedral of St. Vitus]. Praha: Správa Pražského hradu.
- Bušek, Vratislav, Jaroslav Hendrych, Václav Müller, and Karel Laštovka, eds. 1931. *Československé církevní zákony. Díl. I* [Czechoslovak Laws Regulating the Church]. Praha: Československý Kompas, p. 509.
- Charles IV. 2001. *Charles IV. Autobiography of Emperor Charles IV and His Legend of St. Wenceslas*. Edited by Frank Schaer, Ferdinand Seibt and Balázs Nagy. Budapest: Central European University Press, pp. 69–71.
- Cosmas of Prague. 2009. *The Chronicle of the Czechs*. Washington, DC: Catholic University Press, pp. 48–49, 53, 91. Available online: <https://search-ebshost-com.ezproxy.is.cuni.cz/login.aspx?direct=true&AuthType=ip,shib&db=e000xww&AN=943083&lang=cs&site=ehost-live&scope=sit> (accessed on 4 September 2022).

- Czernin, Jan. 1997. Majetková práva obročí, záduší a kostelů v minulosti a jejich transformace dnes [Property Rights of Prebend, *Fabrica Ecclesiae* and Churches in the Past and their Transformation Today]. *Revue církevního práva* 1: 7.
- Editorial Staff. 2005. Spor o katedrálu sv. Víta začne soud projednávat v říjnu [Dispute over the St. Vitus Cathedral Goes to Court in October]. *E-pravo.cz*, September 26. Available online: <https://www.epravo.cz/top/clanky/spor-o-katedralu-sv-vita-zacne-soud-projednavat-v-rijnu-36176.html?mail> (accessed on 23 August 2022).
- Editorial Staff. 2007. Soud rozhodl: Katedrála svatého Víta se vrací českému státu [Court Decided: St. Vitus Cathedral Returns to the Czech State]. *Deník.cz*, September 29. Available online: [https://www.denik.cz/z\\_domova/spor\\_katedrala20070929.html](https://www.denik.cz/z_domova/spor_katedrala20070929.html) (accessed on 23 August 2022).
- Editorial Staff (ČTK). 2015. Zeman přenechá katolické církvi dvě budovy na Pražském hradě [Zeman Gives Two Building at Prague Castle to Catholic Church]. *Aktuálně.cz*, July 14. Available online: <https://zpravy.aktualne.cz/regiony/praha/katolicka-cirkev-dostane-dve-budovy-na-prazskem-hrade/r~227428982a1511e5b1d8002590604f2e/> (accessed on 24 August 2022).
- Frinta, Ondřej. 2008. Právnícké osoby [Legal Entities]. In *Prameny a nové proudy právní vědy No. 40*. Praha: Faculty of Law, Charles University in Prague, p. 101.
- Heyrovský, Leopold. 1910. *Dějiny a systém soukromého práva římského [History and System of Roman Private Law]*, 4th ed. Praha: J. Otto, p. 178.
- Hledíková, Zdeňka, Jan Janák, and Jan Dobeš. 2005. *Dějiny správy v českých zemích od počátku státu po současnost [History of Administration in the Czech Lands from the Beginning of the State to the Present]*. Praha: Lidové noviny, p. 177.
- Hrdina, Ignác Antonín. 2006. Kauza katedrála [Cathedral Affair]. *Revue církevního práva* 3: 204–5, 210–11.
- Kristián, and Jaroslav Ludvíkovský, trans. 1978. *Kristiánova legenda: Život a umučení svatého Václava a báby jeho svaté Ludmily [Christian's Legend: Life and Passion of St. Wenceslas and his Grandmother St. Ludmila]*. Praha: Vyšehrad, p. 21.
- Kříž, Jakub, and Václav Valeš. 2013. *Zákon o majetkovém vyrovnání s církvemi a náboženskými společnostmi. Komentář. [Act Regulating Property Settlement with the Churches and Religious Societies]*. Praha: C. H. Beck.
- Kroupa, Petr, Petr Chotěbor, Martin Halata, and Zdeněk Lukeš. 2022. *Pražský hrad—Srdce českého státu [Prague Castle—The Heart of the Czech State]*. Praha: Správa Pražského hradu.
- Kubeczka, Josef. 2007. Komu patří katedrála? [Who Owns the Cathedral?]. *Radio Prague International.cz*. March 7. Available online: <https://cesky.radio.cz/komu-patri-katedrala-8610180> (accessed on 23 August 2022).
- Kuchyňová, Zdeňka. 2010. Na místě Pražského hradu byl tajemný vrcholek Žiži [The Secret Hill of Žiži at the Location of Today's Prague Castle]. *Český rozhlas*. March 26. Available online: <https://cesky.radio.cz/na-miste-prazskeho-hradu-byl-tajemny-vrcholek-zizi-8575350> (accessed on 20 August 2022).
- Kuthan, Jiří, and Jan Royt. 2011. *Katedrála sv. Víta, Václava a Vojtěcha. Svatyně českých patronů a králů [Cathedral of Sts. Vitus, Wenceslas and Adalbert. A Shrine of Czech Patron Saints and Kings]*. Praha: Nakladatelství Lidové Noviny. Available online: <https://www.katedralasvatehovita.cz/cs/historie-a-dedictvi> (accessed on 20 August 2022).
- Kyzourová, Ivana, and Vít Vlnas. 2016. *Žezlo a koruna. Karel IV. a české královské korunovace [The Sceptre and the Crown. Charles IV. and Bohemian Royal Coronations]*. Praha: Správa Pražského hradu.
- Maříková-Kubková, Jana, et al. 2019. *Katedrála viditelná a neviditelná. I. a II. díl. Průvodce tisíciletou historií katedrály sv. Víta, Václava, Vojtěcha a Panny Marie na Pražském hradě [Visible and Invisible Cathedral. Part I and II. Guide to the Thousand-Year-Old History of the Cathedral of Sts. Vitus, Wenceslas, Adalbert and Virgin Mary]*. Praha: Hilbertinum—Společnost Kamila Hilberta, z. s., a Archeologický Ústav AV ČR Praha, v. v. i.
- Moucha, Václav, Bořivoj Nechvátal, Ladislav Varadzin, et al. 2015. *Vyšehrad. Knížecí a královská akropole [Vyšehrad. Princely and Royal Acropolis]*. Praha: Archeologický ústav ČR.
- Němcová, Barbora. 2006. Katedrála svatého Víta definitivně patří státu, rozhodl Nejvyšší soud [Supreme Court's Final Decision: St. Vitus Cathedral Belongs to the State]. *iDNES.cz*. August 3. Available online: [https://www.idnes.cz/zpravy/domaci/katedrala-svateho-vita-definitivne-patri-statu-rozhodl-nejvyssi-soud.A090305\\_090523\\_domaci\\_ban](https://www.idnes.cz/zpravy/domaci/katedrala-svateho-vita-definitivne-patri-statu-rozhodl-nejvyssi-soud.A090305_090523_domaci_ban) (accessed on 24 August 2022).
- Petr, Pavel, Ondřej Horák, and Petr Dostálík. 2018. Divided ownership: Development and perspectives. *DANUBE: Law, Economics and Social Issues Review* 9: 83. Available online: <https://www.econstor.eu/bitstream/10419/242126/1/104209862X.pdf> (accessed on 25 September 2022). [CrossRef]
- Pludek, Alexej. 1978. *Český král Karel [Charles, King of Bohemia]*. Praha: Panorama, pp. 81–82.
- Pregler, Tomáš. 2017. Kardinál Vlk málem vyhrál boj o katedrálu. Klíčový verdikt soudu byl na spadnutí [Cardinal Vlk Almost Won the Battle over the Cathedral. Court About to Deliver Crucial Judgment]. *Aktuálně.cz*, March 24. Available online: <https://zpravy.aktualne.cz/domaci/neznama-kapitola-jak-kardinal-vlk-malem-vyhral-boj-o-katedra/r~ccaa8a6c10b111e7afda0025900fea04/> (accessed on 24 August 2022).
- Pšenička, Stanislav. 2002. Vývoj patronátního práva v českých zemích od doby osvícenského absolutismu do roku 1949 [Development of the Right of Patronage in the Czech lands from the Period of Enlightened Absolutism to 1949]. *Revue církevního práva* 2: 127, 135.
- Royt, Jan, and Jiří Kuthan. 2016. *Karel IV.—Císař a český král—vizionář a zakladatel [Charles IV.—Emperor and Czech King—Visionary and Founder]*. Praha: Lidové noviny.
- Šmahel, František, and Lenka Bobková. 2012. *Lucemburkové—česká koruna uprostřed Evropy [The House of Luxembourg—The Czech Crown in the Middle of Europe]*. Praha: Lidové noviny.

- Stern, Jan. 2006. Zdeněk Mahler bilancuje kauzu katedrály sv. Víta: “Spor o smysl českých dějin neskončil” [Zdeněk Mahler Looks Back at the St. Vitus Cathedral Affair: “Dispute over the Meaning of Czech History not Over”]. *Britské listy*, August 3. Available online: <https://legacy.blisty.cz/art/29625.html> (accessed on 23 August 2022).
- Strašíková, Lucie. 2008. Spor o katedrálu svatého Víta se vleče už přes 15 let [The Dispute over the Cathedral Has Dragged on for More than 15 Years]. *Česká televize*, January 24. Available online: <https://ct24.ceskatelevize.cz/archiv/1464802-spor-o-katedralu-svateho-vita-se-vlece-uz-pres-15-let> (accessed on 23 August 2022).
- Svoboda, Emil. 1909. *O reálném dělení domů v obvodu bývalého pražského ghetta [About the Actual Division of Houses in the District of the Former Prague Ghetto]*. Praha: Lidové družstvo tiskařské a vydavatelské, p. 60.
- Svoboda, Emil. 1935. *Rodinné právo československé [Family Law in Czechoslovakia]*. Praha: Vesmír, p. 6.
- Třeštík, Dušan. 2003. *Mýty kmene Čechů [Legends of the Tribe of Bohemians]*. Praha: Lidové noviny, p. 156.
- Třeštík, Dušan, Petr Sommer, and Josef Žemlička, eds. 2009. *Přemyslovci—budování českého státu [The House of Přemysl—Building the Czech State]*. Praha: Lidové noviny.
- Tretera, Jiří Rajmund. 1997. *Konfesní právo a církevní právo [Confessional and Canon Law]*. Praha: Jan Krigl, pp. 9, 21.
- Valeš, Václav. 2012. Zamyšlení nad “blokačním paragrafem”. K 20. výročí platnosti a účinnosti ustanovení § 29 zákona č. 229/1991 Sb. o úpravě vlastnických vztahů k půdě a jinému zemědělskému majetku [Reflection on the “Blocking Provision”. On the 20th Anniversary of the Effective Date of Section 29 of Czech Law No. 229/1991 Coll. on Property Relations Concerning Land and Other Agricultural Property]. *Revue církevního práva* 1: 43–45.
- Volavka, Vojtěch. 1948. *Praha: Tvář a minulost, kultura a umění [Prague: Face and Past, Culture and Art]*. Praha: Jaroslav Podroužek, pp. 340, 342.
- Zápotočná, Pavla. 2011. Spor o katedrálu Sv. Víta s přihlédnutím k historickému vlastnictví sakrálních objektů na českém území [Dispute over the St. Vitus Cathedral with Regard to the Historical Ownership of Religious Buildings]. Bachelor’s thesis, Faculty of Theology, University of South Bohemia in České Budějovice, České Budějovice, Czech Republic. Available online: [https://theses.cz/id/r61gqo/Spor\\_o\\_katedralu\\_sv\\_Vita\\_BP\\_2011.pdf](https://theses.cz/id/r61gqo/Spor_o_katedralu_sv_Vita_BP_2011.pdf) (accessed on 23 August 2022).
- Zeman, Jiří. 2011. Komu zvoní katedrála?—Vlastnictví katedrály sv. Víta, Václava a Vojtěcha z ústavněprávního pohledu [For Whom the Cathedral Tolls?—Ownership of the Cathedral of Sts. Vitus, Wenceslas and Adalbert from the Perspective of Constitutional Law]. Available online: <https://www.law.muni.cz/sborniky/dp08/files/pdf/ustavko/zeman.pdf> (accessed on 23 August 2022).
- Zvolánek, Jan, Igor Kytka, Jakub Pokorný, and Petr Suchomel. 2010. České katolíky povede Duka, papež mu svěřil úřad arcibiskupa [Duka Becomes the New Head of Czech Catholics after Being Appointed Archbishop by Pope]. *iDNES.cz*, February 13. Available online: [https://www.idnes.cz/zpravy/domaci/ceske-katoliky-povede-duka-papez-mu-sveril-urad-arcibiskupa.A100213\\_104937\\_domaci\\_jan](https://www.idnes.cz/zpravy/domaci/ceske-katoliky-povede-duka-papez-mu-sveril-urad-arcibiskupa.A100213_104937_domaci_jan) (accessed on 24 August 2022).

**Disclaimer/Publisher’s Note:** The statements, opinions and data contained in all publications are solely those of the individual author(s) and contributor(s) and not of MDPI and/or the editor(s). MDPI and/or the editor(s) disclaim responsibility for any injury to people or property resulting from any ideas, methods, instructions or products referred to in the content.